

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:

J. KIRBY DEVELOPMENT, L.L.C. AND
VEDANTA CENTER OF GREATER
WASHINGTON D.C., INC.,

Zoning Application No. G-836

Applicants

John Clapsaddle
Stuart Elkman
Wes Guckert
Jeff Kirby
Rock Lopes
James O'Brien
Phil Perrine

For the Application

Scott Wallace, Esquire

Attorney for the Applicant

Laurence Andrews
Max Bronstein
Wayne Courtney
Richard Kauffinger
Linda Nishioka
Joe Podson

In Opposition to the Development
Plan

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

TABLE OF CONTENTS

| | Page No. |
|--|----------|
| I. SUMMARY | 3 |
| II. STATEMENT OF THE CASE | 4 |
| III. FINDINGS OF FACT | 5 |
| A. Subject Property | 5 |
| B. Surrounding Area | 6 |
| C. Zoning and Land Use History | 9 |
| D. Proposed Development | 10 |
| E. Development Plan | 20 |
| F. Master Plan | 27 |
| G. Environmental Issues and Storm Water Management | 34 |
| H. Public Facilities | 35 |
| 1. Transportation | 36 |
| 2. Water and Sewer | 42 |
| 3. Schools | 42 |
| I. Support for the Application | 43 |
| J. Community Concerns about Development Plan | 44 |
| IV. SUMMARY OF HEARING | 49 |
| A. Applicant's Case in Chief | 49 |
| B. Applicant's Rebuttal | 62 |
| C. Community Participation | 64 |
| V. ZONING ISSUES | 72 |
| A. The Development Plan | 73 |
| 1. Purposes of the Zone | 77 |
| 2. Standards and Regulations of the Zone | 85 |
| B. Public Interest | 90 |
| VI. CONCLUSIONS | 91 |
| VII. RECOMMENDATION | 92 |

I. SUMMARY

The present application seeks to rezone 16 acres of land at the intersection of Bel Pre Road and Homecrest Road in Silver Spring from the RE-2 Zone to the PD-2 Zone. The 16-acre tract is made up of three parcels. Two are developed with single-family detached homes and the third is the site of the Vedanta Center, a non-denominational worship center. The Vedanta Center has joined J. Kirby Development as an applicant. Together, they propose development of 38 new homes (20 single-family detached, 12 duplex units and six MPDU townhouses) and construction of a new worship building. The existing Vedanta Center worship building and guest house would remain.

The PD Zone cannot be applied unless the District Council simultaneously approves a Development Plan that meets the requirements set forth in the Zoning Ordinance. In this case, the Development Plan has four serious deficiencies: a dense form of development on the west side of the site that is not compatible with the surrounding area; a provision stating that building locations are entirely illustrative, suggesting that a completely different layout might be presented at site plan; a provision stating that the green area, shown at 46 percent of the site, could decrease by as much as a third, down to the minimum 30 percent required in the zone, with no explanation of how such a dramatic change would affect the site layout; and a provision indicating that one of the two access points shown on Homecrest Road may not be built. The latter deficiency is troubling for two reasons: it inhibits the District Council from fully evaluating the access and circulation plan, and it calls into question compliance with the Master Plan, which identified one of the Homecrest Road access points as an important goal. The Development Plan also contains a series of minor deficiencies, which are identified in Part III.E. of this report.

The Hearing Examiner recommends a remand of the present case, rather than denial, because all of the deficiencies that have been identified can be cured by a revision of the Development Plan. The Hearing Examiner is persuaded that with an appropriate development plan, reclassification of the subject property to the PD-2 Zone and its use for residential housing

and an expanded Vedanta Center would be in the public interest. Accordingly, this report recommends a remand of this case to give the Applicants the opportunity to correct the deficiencies on the Development Plan that are identified in this report, and to propose a form of development that will be compatible with surrounding land uses.

II. STATEMENT OF THE CASE

Application No. G-836, filed on March 3, 2005 by Applicants J. Kirby Development, L.L.C. and Vedanta Center of Greater Washington D.C., Inc., requests reclassification from the RE-2 Zone (Residential, one-family, two-acre minimum lot size) to the PD-2 Zone (Planned Development) of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland, in the 13th Election District. The property is identified as Part of Lots 3, 4 and 5 of the "Homecrest" subdivision, recorded in Plat Book 25, Plat 1586. The Vedanta Center is currently the owner of Lot 4. Lots 3 and 5 are currently owned by separate individuals. J. Kirby Development is identified as a contract purchaser, presumably with reference to Lots 3 and 5. The proposed Development Plan contemplates land swaps between the two Applicants, with both remaining as owners.

The application was initially reviewed by Technical Staff of the Maryland-National Capital Park and Planning Commission ("MNCPPC") who, in a report dated October 11, 2005, recommended *approval*.¹ The Montgomery County Planning Board ("Planning Board") considered the application on October 20, 2005 and recommended *approval* by a vote of 4 to 0. A public hearing was conducted on November 4, 2005 at which testimony and evidence were presented in support of and in opposition to the application. The record was held open briefly to receive supplemental submissions from the parties and Technical Staff, and closed on December 9, 2005. By Resolution dated January 24, 2006 and effective *nunc pro tunc* as of January 23, 2006, the District Council extended the time for submission of the Hearing Examiner's report and recommendation by two weeks, to February 6, 2006.

III. FINDINGS OF FACT

For the convenience of the reader, the findings of fact are grouped by subject matter. Where there are conflicts in the evidence, these conflicts are resolved under the preponderance of the evidence test.

A. Subject Property

The subject property consists of approximately 16 acres of land located in the northeast quadrant of the intersection of Bel Pre Road and Homecrest Road, roughly midway between Bel Pre Road's intersections with Georgia Avenue to the west and Layhill Road to the east. The three lots comprising the subject property form a nearly square tract of land, with approximately 867 feet of frontage on Bel Pre Road, a five-lane undivided arterial road with an 80-foot right-of-way, and 800 feet of frontage on Homecrest Road, a narrow, two-lane, residential primary street. Confronting to the south, across Bel Pre Road, are three- and four-story apartments and townhouses. Confronting to the west, across Homecrest Road, are Aspenwood Senior Living Community, located at the northwest corner of Bel Pre and Homecrest Roads, which provides assisted living for senior adults and special needs care; three single-family homes; and, diagonally to the northwest, Homecrest House, a senior housing and assisted living facility. To the east, the subject property abuts the Wheaton Moose Lodge, which is occupied by a social lodge and is about half wooded. To the north, the subject property abuts the Aspen Hill Racquet and Tennis Club (the "Racquet Club"), a large complex of indoor and outdoor sports facilities, with very large buildings and extensive parking lots.

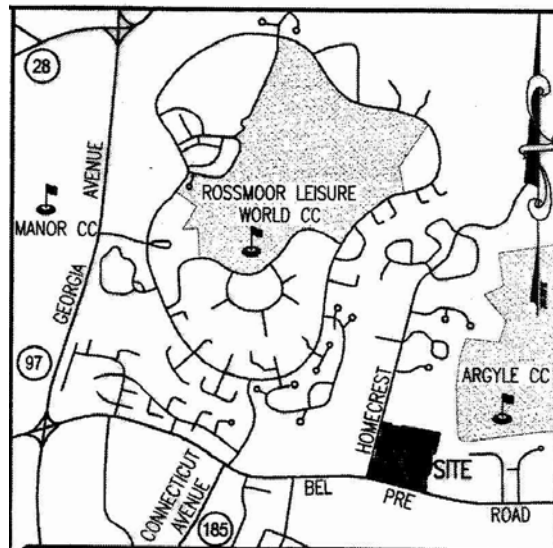
Lot 3, at the east end of the site, is mostly wooded, and has a one-story brick house, a carport and a driveway off of Bel Pre Road. Lot 4, in the center, is also mostly wooded. It is developed with the Vedanta Center, a worship center consisting of a concrete and stone building with a one-story wing and a two-story wing, which is used for congregation gatherings and a home

¹ The Staff Report is liberally paraphrased and quoted in Part II of this report.

for resident monks; a small, brick, 1 ½ story guest house; a paved driveway off of Bel Pre Road; and a gravel parking area. Lot 5, at the west end of the site, is mostly grassy, with a one-story brick house, a concrete block garage, a metal shed and driveway access from Homecrest Road.

The subject property is gently to moderately sloping. It contains approximately 9.62 acres of forest, with two major forest stands rated good quality. The property contains no flood plains, but a small stream known as Bel Pre Creek flows through the northeast part of the property, making a substantial portion of the combined property undevelopable stream valley buffer.

The general shape and location of the subject property are shown on the map that follows (excerpted from Ex. 60(a)).



B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development.

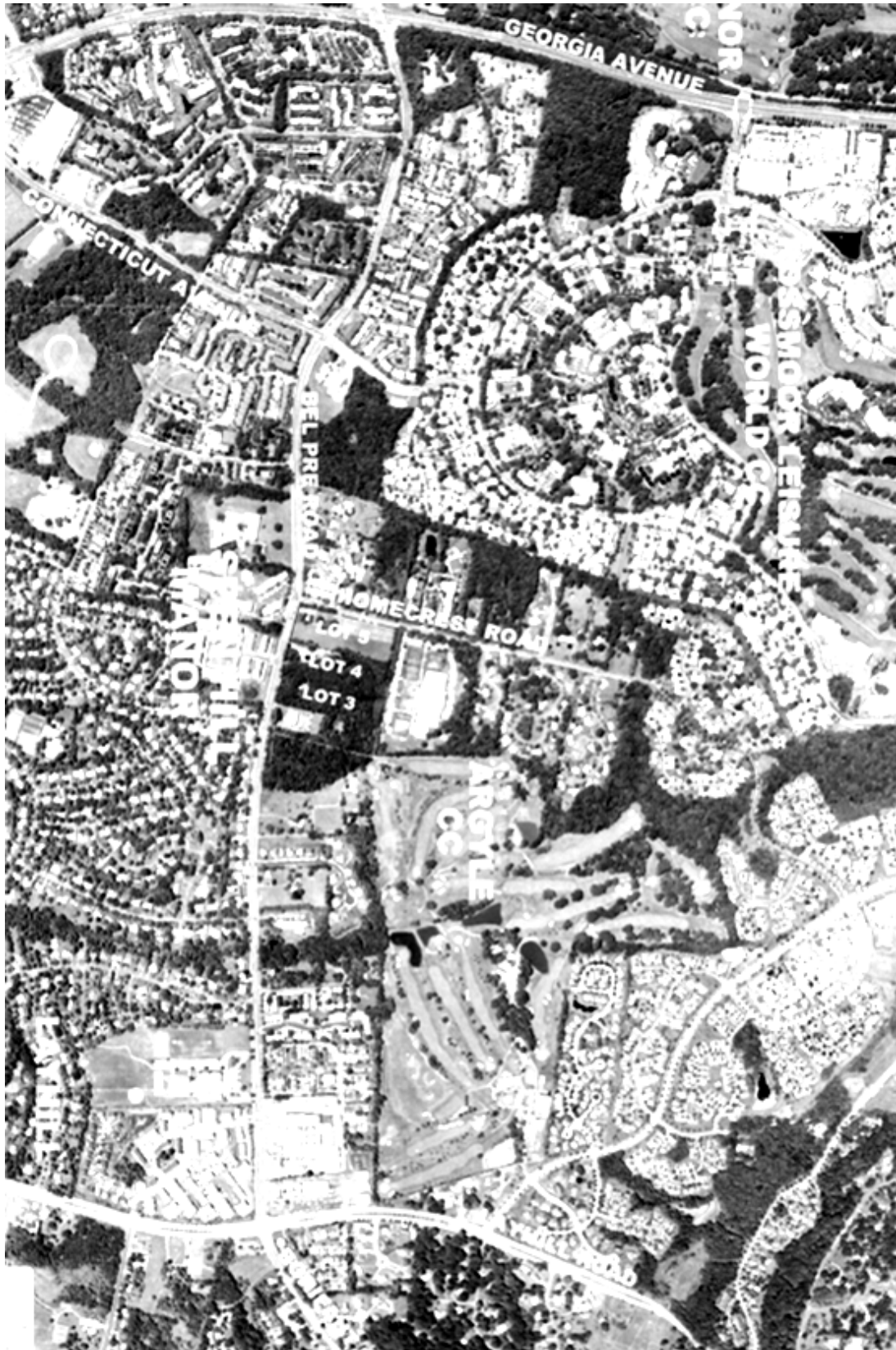
In the present case, Technical Staff described the surrounding area as the land designated in the *1994 Approved and Adopted Aspen Hill Master Plan* (the “Master Plan”) as the

Bel Pre Road Area. See Staff Report, Ex. 28 at 6; Master Plan at 46-47. As shown on the Master Plan map below, this 63-acre area extends from Bel Pre Road to the south to Homecrest Road to the west, the property line of Argyle Country Club to the north and the Bel Pre Square Townhouses to the east (located across from North Gate Drive).

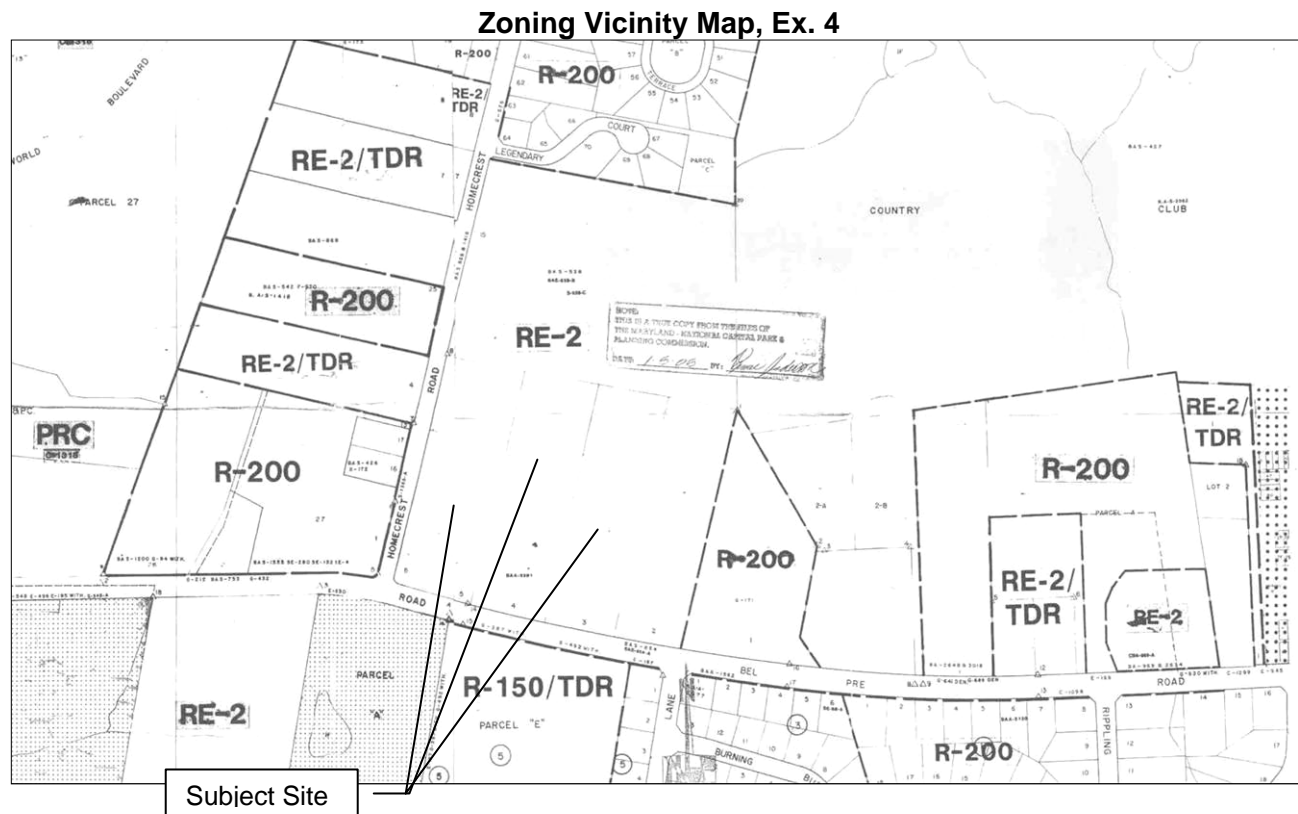
The Applicants' land planner, Phil Perrine, considered the surrounding area to include principally the abutting and confronting land uses, noting that the surrounding area to be considered for a small development is smaller than for a development with larger impacts, such as a ten-story high-rise. Mr. Perrine appears to underestimate the likely impact of the proposed development, which would represent a significant change in density and intensity of use on an important corner property. Accordingly, the Hearing Examiner agrees with Technical Staff that the Bel Pre Road Area as described in the Master Plan may properly be considered part of the surrounding area for purposes of this application. However, confronting properties on Bel Pre and Homecrest Roads and the adjacent property that are not within that defined area undoubtedly would be affected by the proposed development. Taking both into account, the Hearing Examiner designates the surrounding area as, roughly, the Bel Pre Road Area described in the Master Plan plus properties that are either adjacent or directly or diagonally confronting. The relationship of the subject property to existing land uses in the surrounding area is shown in the aerial photograph on the next page.

The surrounding area contains a mix of uses including three- and four-story apartment buildings, senior housing including assisted living, townhouses, single-family detached homes, churches, a large sports facility, a social lodge and a country club. As shown on the zoning vicinity map on page 9, the zoning pattern is a mixture of RE-2, RE-2/TDR, R-200 and R-150 zoning. Mr. Perrine explained this apparently random zoning pattern by stating that at one time, the entire area was classified under the RE-2 Zone. In 1970, the master plan recommended R-200 zoning, but that was not implemented. Instead individual, piecemeal zoning applications came in for a variety of zones. Most of the properties in the vicinity were reclassified to their current zones

Aerial Photograph, Ex. 38



between 1965 and 1980, and were developed with a variety of uses. Mr. Perrine observed that the current Master Plan attempted to reconcile the different rezonings and provide a plan for the developed areas by retaining existing RE-2 classifications, while also recommending the PD-2 Zone for the subject property and the remaining undeveloped property east of it, all the way to Big Bear Court. Mr. Perrine noted that the PD-2 Zone has the same density as the RE-2 Zone, but allows for more design flexibility to achieve some of the Master Plan's other goals.



The subject property was classified under the R-A (Agricultural Residential) Zone in the 1958 County-wide comprehensive rezoning. The R-A Zone was redesignated the RE-2 Zone by text amendment in 1973, and the subject property's zoning has remained the same since then. The area was recommended for reclassification to the R-200 Zone in the *1970 Aspen Hill Master Plan*, but no sectional map amendment followed. RE-2 zoning on the subject property was confirmed by Sectional Map Amendment G-709 in 1994, as recommended in the 1994 Master Plan.

As noted above, lots 3 and 5 of the subject property are each developed with a single-family home, while lot 5 has been the site of the Vedanta Center for eight and a half years. The Center has ties to Indian spiritual traditions, but considers itself a universal, non-denominational movement, accepting people from all religions and different spiritual paths. The Center teaches spiritual principals and practices including meditation, and tries to maintain a serene atmosphere. The main program is on Sunday morning at 11:00, which involves a series of lectures on different topics, attracting about 60 to 70 people. The Center has study groups on Wednesday and Friday nights from 8:00 to 9:00, youth programs on Saturday afternoons, early morning meditation at 5:30, and evening meditation. Generally, the only people attending weekday activities are the small number who live on site or are staying in the guest house. The Center has larger programs two or three times a year, necessitating a larger parking lot.

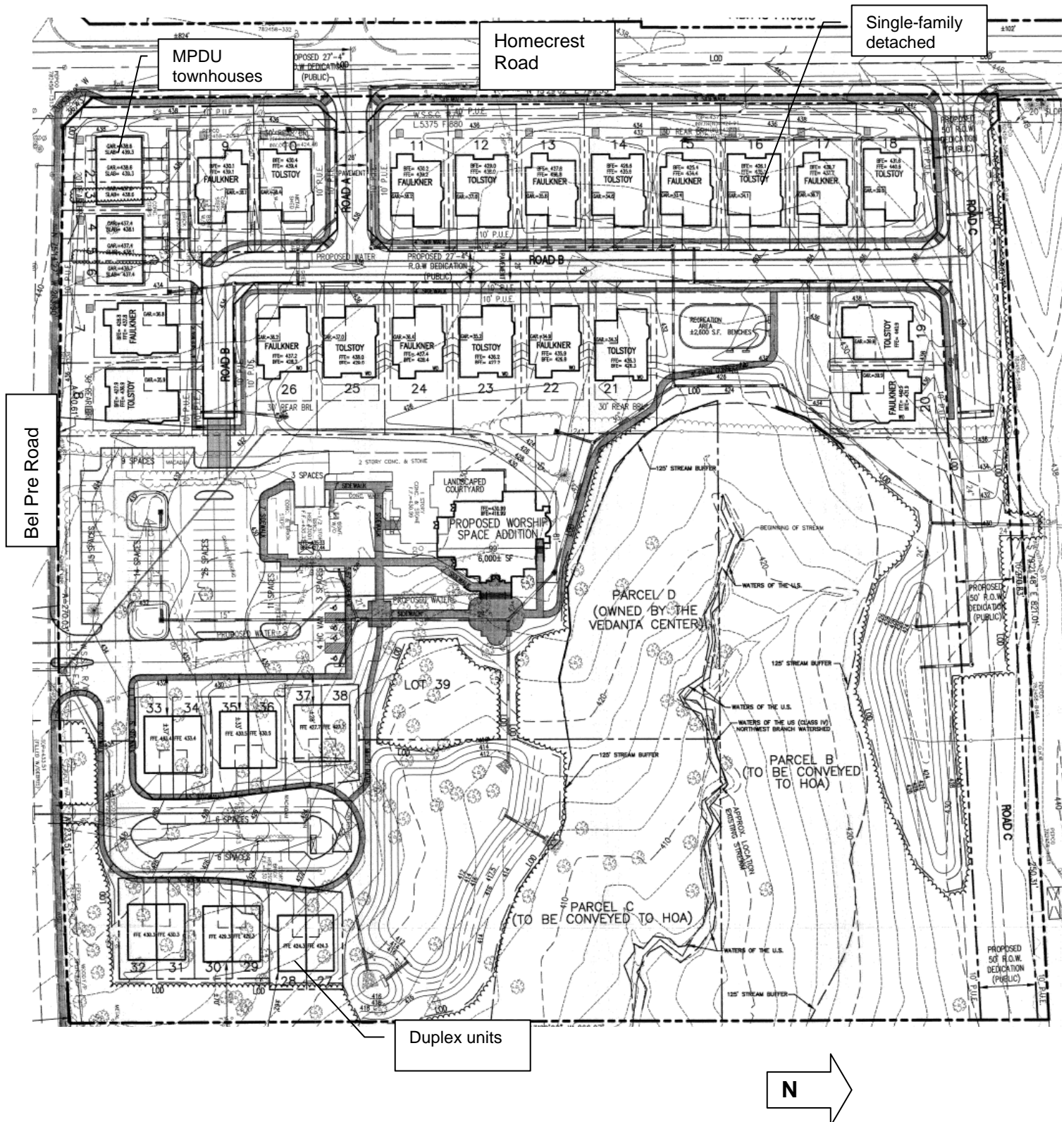
The small house on the Vedanta Center property pre-dates the Center and is used as a guest house, where people occasionally come for a retreat for a few days. The house accommodates five comfortably, with a maximum of seven. It is used as a women's guest house, or for a family. The larger, L-shaped building contains approximately 4,300 square feet of space. It houses the auditorium and a residential wing, whose current residents are two monks. Male visitors, some of whom stay overnight every weekend, sleep in the residential wing of the main building, which can accommodate eight residents.

D. Proposed Development

The Development Plan proposes expansion of the Vedanta Center's facilities and the coordinated development of a residential community with a total of 39 dwelling units: 20 new single-family detached homes, 12 new single-family, semidetached duplex units, six single-family attached units to be marketed as moderately-priced dwelling units ("MPDUs"), and the existing Vedanta Center guest house. The preliminary bedroom calculation indicates that the single-family detached units would have four bedrooms, the townhouses would have two bedrooms with an optional third bedroom, and the duplexes would have three bedrooms. The graphic portion of the Development

Plan, Exhibit 60(a), is reproduced below, with textual elements of the plan provided on the pages that follow.

Graphic Portion of Development Plan, excerpted from Ex. 60(a)



Additional elements of Development Plan, Ex. 60(a).

| LEGEND: | | SCALE: 1"=200' | | | |
|----------------------|--|-----------------------------|--|-----------------------------------|--|
| EXISTING TOPO | | 125' STREAM VALLEY BUFFER | | EXISTING STORM DRAIN | |
| PROPOSED TOPO | | EXISTING WATERS OF THE U.S. | | PROPOSED LIMIT OF DISTURBANCE | |
| PROPOSED WATER | | EXISTING TREELINE | | PROPOSED TREELINE | |
| PROPOSED SEWER | | EXISTING SPECIMEN TREE | | PROPOSED ACCESSIBLE PARKING SPACE | |
| PROPOSED STORM DRAIN | | EXISTING CURB & GUTTER | | PROPOSED CURB & GUTTER | |
| PROPOSED LOT LINES | | EXISTING TELEPHONE POLE | | PROPOSED RECREATION AREA | |
| PUBLIC RIGHT OF WAY | | EXISTING SIDEWALK | | PROPOSED SIDEWALK | |
| PROPOSED BUILDINGS | | EXISTING SEWER | | PROPOSED SPECIAL PAVER AREA | |

ADDITIONAL TEXTUAL BINDING ELEMENTS:

The Binding Elements are an integral part of this development plan and have the same force and effect as the standards and specifications set out in the Montgomery County Zoning Ordinance (1994, as amended) and are binding on the Applicant and all reviewing agencies. The specifications of the development plan must be strictly applied and any deviations must be approved by the district council by way of the development plan amendment process set forth in Section 59-D-1.7 of the Zoning Ordinance.

1. The number of units will not exceed 39 (to include the existing single family residence located on the worship center property).
2. Access will be from a single point on Bel Pre Road and no more than two points on Homecrest Road.
3. The addition to the worship center shall not exceed 6,500 square feet of gross floor area.
4. Fencing and landscaping as shown on the Development Plan along Homecrest Road (within 10 feet of lot lines) shall be maintained by the Homeowners Association.
5. All access points shall be maintained free and clear of any sight distance obstructions located on subject property.

Additional elements of Development Plan, Ex. 60(a).

PD-2 DEVELOPMENT STANDARDS:**Setbacks:**

As per section 59-C-7.15.(b), for land that adjoins land for which the area Master Plan recommends a one-family detached zone, no building other than a one-family detached residence can be constructed within 100 feet of such land

Density:

As per section 59-C-7.14 of the Zoning Ordinance-2 Units per Acre - may be increased by 22% (2.44 units per acre) if 15% MPDUs are provided

Building Height:

As per section 59-C-7.15.(b), for land that adjoins land for which the area Master Plan recommends a one-family detached zone, no building can be greater in height than its distance from such land

Green Area:

Minimum 30% of Gross Area as per Section 59-C-7.16 of the Zoning Ordinance (30% of 16.02 acres - gross area = 4.81 acres)

Provided:

No buildings other than single family detached units are located within 100 feet of adjacent land to north that is recommended for single family detached zone (RE-2) in Aspen Hill Master Plan; land adjoining the property to the east is recommended for PD Zone in the Aspen Hill Master Plan

Provided:

Up to 2.4 units per acre - up to 39 units including 6 MPDUs (15.3% of total units).

Provided:

Residential Units- Maximum of 40 feet in height - all units located minimum of 60 feet from adjacent land to north recommended for single family detached zone in Aspen Hill Master Plan; land adjoining the property to the east is recommended for PD Zone in the Aspen Hill Master Plan

Worship Center- Maximum of 25 feet - located over 400' from adjacent land to north recommended for single family detached zone in Aspen Hill Master Plan; land adjoining the property to the east is recommended for PD Zone in the Aspen Hill Master Plan

No other adjoining land is recommended for residential zoning in the Aspen Hill Master Plan

All heights as defined in Section 59-A-1.2 of the Zoning Ordinance. All cupolas and domes are exempt from building height restrictions per Section 59-B-1.1 of the Zoning Ordinance

Provided:

7.33 acres provided or 46% of gross area*

*Green Area provided subject to change based on final engineering and further revision during subsequent Preliminary and Site Plan proceedings, provided that minimum of 30% will be provided.

NUMBER OF BEDROOMS PER UNIT (PRELIMINARY)*:**Single Family Detached:**

Tolstoy: 4

Faulkner: 4

Kipling: 4

Townhouse:

Fairmont: 2 with an optional 3rd

Duplex:

3 Bedrooms

Worship Center:

None

*House model types shown on Development Plan and number of bedrooms listed are for illustration only and are subject to further revision at subsequent Preliminary and Site Plan proceedings.

Additional elements of Development Plan, Ex. 60(a).

PARKING SCHEDULE*:

Single Family Detached:

Required Parking Spaces: 2 spaces per unit (2 x 20=40)
 Proposed Parking Spaces: 4 spaces per unit (2 garage / 2 driveway)
 80 total spaces

*Existing single family residential dwelling unit is located on worship center site and utilizes parking provided thereon.

Townhouse:

Required Parking Spaces: 2 spaces per unit (2 x 6=12)
 Proposed Parking Spaces: 2 spaces per unit (1 garage / 1 driveway)
 12 total spaces

Duplex:

Required Parking Spaces: 2 spaces per unit (2 x 12=24)
 Proposed Parking Spaces: 2 spaces per unit (1 garage / 1 driveway)
 24 total spaces

Worship Center:

Total number of seats in main auditorium: 212
 Required Parking Spaces: 1 space per 4 seats (212/4=53 spaces)
 Proposed Parking Spaces: 85 total spaces *
 81 Regular Spaces @ (9' x 18')
 4 Handicapped Van Spaces
 (1 Additional Loading Space)

*Final number of parking spaces is subject to revision during subsequent Preliminary Plan and Site Plan proceedings. Location of parking is illustrative only.

DEVELOPMENT PROGRAM:

Phase I - Commence grading and infrastructure of up to 38 residential lots, develop finished lots
 Phase II - Commence construction of up to 20 single family homes and 6 MPDU townhouses on the finished lots
 Phase III - Commence construction of up to 12 duplex homes on finished lots
 Phase IV- Commence construction on the 6,500± SF Vedanta Center Expansion.

*The Phases I-IV described above may occur in any order or simultaneously provided that construction of the 6 MPDU townhouses will commence no later than commencement of the 18th market rate unit.

General Notes from Development
Plan, Ex. 60(a)

GENERAL NOTES:

1. 2' topography prepared by Patton Harris Rust + Associates, pc (April 2005).
2. Boundary prepared by Patton Harris Rust + Associates, pc from available records.
3. Existing Zoning: RE-2
4. Proposed Zoning: PD-2
5. Gross Tract Area: ±16.02 acres
Lot 3: 4.97 acres
Lot 4: 5.30 acres
Lot 5: 5.75 acres
6. Election District: 13
7. Planning Area: No. 27 Aspen Hill
8. Tax Map No. HR 563
9. W.S.S.C. Map: 219 NW 03
10. ADC Map: Montgomery County Map 30, Grid F-5
11. Proposed Use: 6 Town House Units
*21 Single Family Detached Units (1 Existing / 20 Proposed)
12 Duplex Units
Expansion to existing worship center (6,500± SF)
*Existing single family residential dwelling unit is located on worship center site.
12. Existing Forest Cover: 8.97 AC.
13. Existing water category W-1, existing sewer category S-1.
14. There are no known historic features on this site, or adjacent to this site.
15. There are no cemeteries located on or adjacent to the site.
16. A jurisdictional determination for the subject property has been completed (CENAB-OP-RMS (ASPEN HILL MANOR)05-02275-11). No wetlands have been found on this site.
17. Developer/Contract Purchaser:
J. Kirby Development
Attn: Jeff Kirby
11215 Dovedale Court, Suite B
Woodstock, MD 21104
T: 410.442.5080 F: 410.442.5081
18. Owners:
Lot 5: Arnold K Gebhart et al.
3031 Bel Pre Road
Silver Spring, MD 20906

General Notes from
Development Plan. cont.

Lot 4: Vedanta Center of Greater Washington DC

Attn: Mr. Stuart Ekman
3001 Bel Pre Road
Silver Spring, MD 20906
T: 301.603.1772

Lot 3: Theodore Vogt

1782 Blackmer Boulevard
Stockbridge, VT 05772

19. Planner/Engineer:

Patton Harris Rust + Associates, PC
8818 Centre Park Drive, Suite 200
Columbia, Maryland 21045
T: 410.997.8900 F: 410.997.9282

20. 10' Public Utility Easement runs along all Public Right of Way.

21. The predominate soil types are:

- 1C Galla Silt Loam (8-15% slopes)
- 2B Glenelg Silt Loam (3-8% slopes)
- 6A Baile Silt Loam (0-3% slopes)

*From Soil Survey-Montgomery County Maryland

22. Location and design stormwater management facilities, roads and utilities shown hereon are for illustration only, based on preliminary design, and are subject to final engineering and further revision during subsequent subdivision and site plan proceedings.

23. All sidewalk ramps to conform to Montgomery County DOT Standard No. MC-112.01.

24. All concrete curb and gutter shall be in accordance with Montgomery County DOT Standard No. MC-100.01, and meet existing curb, gutter, and paving in line and grade.

25. Spill gutters on all high side curb and gutter.

26. All parking island curb radii 5' unless otherwise noted.

27. All parking to be painted / striped.

28. Fill areas:

- A. Class I fill to be placed below all buildings.
- B. Class II fill to be placed below all paved areas including parking lots, drives, and sidewalks.
- C. Class III fill to be placed in areas that will remain "green".

29. Footings to be extended to existing ground where necessary.

30. Slopes: Maximum - 2:1
Minimum - 2% grassed / 1% paved

31. Lots sizes and shapes and building locations are for illustration only and may be further revised at subsequent Preliminary and Site Plan proceedings.

The existing Vedanta Center worship building and its attached residential wing, roughly in the middle of the site, would be retained. In addition, a new, 6,500-square foot structure would be built onto the rear wall of the existing worship building, with a landscaped courtyard between the old and new structures. The new building would provide a worship space with approximately 212 seats, a study room, an entry lobby, bathrooms, storage space, a cellar gathering space and a kitchen. The Center plans to use the existing auditorium as a multi-function meeting space. The new building would provide a larger auditorium, as well a space in the cellar to serve refreshments after worship activities, which is lacking in the current facility. The architecture for the new building is based on a well-known Indian Hindu temple, incorporating a blend of traditional Indian and European styles. The maximum height, excluding cupolas and domes, would be 24 feet. The new Vedanta Center building would face east, towards a wooded area abutting the stream valley buffer. It would be partially obscured from Bel Pre Road by the existing Vedanta Center buildings, so one would have only an oblique view of the new building from Bel Pre Road.

The Development Plan allocates the land immediately south of the Vedanta Center, between the Center and Bel Pre Road, to an 85-space parking lot for the Vedanta Center. East of the parking lot, in the southeast corner of the site, the Development Plan shows 12 duplex units. Testimony indicated that these units would be under the Vedanta Center's ownership, and that the Center hopes to sell the units with covenants restricting their occupancy to members of the Vedanta Center community. The duplex units are shown with access via the same driveway serving the Vedanta Center; cars would turn left to enter the Vedanta Center parking lot or right to reach the cluster of duplex units. Each duplex unit is shown with a one-car garage and one driveway space. The Development Plan depicts the 12 units as six buildings, arranged in two rows of three that face each other across a median ringed by an oblong access road. Six parallel parking spaces are shown along each side of the median. The plan shows a sidewalk winding from Bel Pre Road to the duplex units, and continuing on to link the duplexes to sidewalks within the Vedanta Center

facility, and from there to a path leading along the stream valley buffer to a proposed recreation area on the west side of the site.

The Development Plan places the cluster of duplex units adjacent to a dry stormwater management pond to the north. To the south, the duplex units would be buffered from the adjacent Bel Pre Road by a stand of trees ranging in depth from about 25 feet to about 40 feet.² To the west, as noted above, the duplex units are shown abutting the Vedanta Center parking lot, with a setback of about 65 feet. No buffering is shown between the backyards for the units and the sidewalk along the parking lot access road. To the east, the duplex units would abut the property of the Wheaton Moose Lodge. The lodge structure is located directly across the property line from the location proposed for some of the duplex units; at its closest point, the lodge is shown approximately 62 feet from the two closest duplex units and 70 feet from four others.³ The duplex units would be buffered from the noise and activity of Moose Lodge activities by a wooded area about 30 to 35 feet deep.⁴

As described above and shown on the Development Plan, the Vedanta Center and its 12 duplex units would occupy roughly a third of the site, in the central and southeast portion of the site. Roughly another third of the site, in the central and northeast portion of the site, would be occupied by non-developable stream valley buffer and a provision for future dedication of a 50-foot road right-of-way along the northern border. The Development Plan shows the western third of the property as the main residential area, with 20 single-family, detached homes and six MPDU townhouses. The Development Plan shows most of the single-family homes facing each other across an internal roadway ("Road B"), with two homes at either end facing Bel Pre Road to the

² These figures were scaled off by the Hearing Examiner from a revised site plan submitted after the hearing.

³ The site plan that was submitted at the hearing showed the duplex units quite close to the eastern property line, only 35 feet from the Moose Lodge building. Based on concerns raised at the hearing by a representative of the Moose Lodge, the site plan was revised to move these units 25 to 30 feet west, creating space for a wooded buffer. This necessitated removing a wooded buffer that was previously shown between the duplex units and the Vedanta Center parking lot.

⁴ These figures were scaled off by the Hearing Examiner from a revised site plan submitted after the hearing.

south and a proposed stub road to the north. The Development Plan anticipates that each house will have a two-car garage and two driveway parking spaces. The MPDUs are shown clustered in two groups of three townhouses, which would be designed to have the appearance of large single-family homes. They would have their own stub access road, and each would have a one-car garage and one driveway parking space. All of the streets would be connected by sidewalks. The Development Plan also shows a 2,500-square-foot open recreation area along the main internal roadway, with benches along the adjacent path. The duplex units at the other end of the site would be connected to this recreation area, and to the rest of the community, by a trail shown running along part of the stream valley and past the Vedanta Center.

The Development Plan shows one point of access on Bel Pre Road, aligned with the Vedanta Center's existing entrance and its parking lot. It shows two points of access on Homecrest Road, "Road A" near the southeast corner of the site, not far from the intersection of Bel Pre and Homecrest Roads, and "Road C" at the very northern end of the site. Road C is proposed in an effort to satisfy a transportation objective stated in the Master Plan, which called for a road along the northern boundary of the subject site and beyond, to provide internal circulation routes for future development in the area. As candidly stated by the Applicants' traffic planner, Wes Guckert, Road C would be convenient for the homes at the northern end of the development, but is not necessary for safe, adequate and efficient circulation. The Development Plan provides for actual construction of Road C only as far as the houses would be built, on the expectation that a length of road with no homes on it would tend to become a lover's lane and attract undesirable nighttime activity. The Development Plan shows Road C stopping at the end of the last home, with a 50-foot right-of-way dedication along the remainder of the frontage.⁵ The testimony indicated that Applicants intend to provide a small dedication of land along the site's Homecrest Road frontage, but this dedication is

⁵ Testimony indicated that Applicant J. Kirby Development expects to be obligated during site plan review to pay for construction of the road to the eastern property line at some future point, if needed for proposed development of properties to the east.

not clearly shown on the Development Plan.⁶ It would be intended to provide 35 feet from the property line to the center of the roadway, consistent with the Master Plan's recommendation that Homecrest Road should have a 70-foot right-of-way.

An additional element of the on-site circulation plan is a feature located where Road B would otherwise connect with the Vedanta Center parking lot, which Mr. Perrine described as a "friendly connection." This connection would be paved, but would not have the appearance of a normal road. The specifics have not yet been determined, but Mr. Perrine indicated that the connection would be available to pedestrians and emergency vehicles, but not to normal traffic.

With regard to phasing, the Development Plan divides the proposed development into four phases (grading and infrastructure, single-family detached homes and townhouses, duplex units, and Vedanta Center expansion, in that order). It specifies, however, that the four phases may occur in any order or simultaneously, provided that "construction of the 6 MPDU townhouses will commence no later than commencement of the 18th market rate unit." Ex. 60(a).

The aerial photograph reproduced on the next page shows most of the subject property, as well as some adjacent properties, with the lot lines proposed on the Development Plan superimposed.

E. Development Plan

Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. This development plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. The Development Plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plan is subject to site plan review by the

⁶ As discussed further below, this deficiency will need to be rectified if the application moves forward.

Planning Board, and changes in details may be made at that time. The principal specifications on the Development Plan – those that the District Council considers in evaluating compatibility and compliance with the zone, for example – may not be changed without further application to the Council to amend the Development Plan.

Aerial Photograph with Proposed Lot Lines, Ex. 39



The principal component of the Development Plan in this case is a document entitled Development Plan, Exhibit 60(a), which is reproduced in the previous section (pages 11-16). Additional elements of the Development Plan have been submitted through exhibits, including two aerial photographs of the area (Exs. 38 and 39) and a Natural Resources Inventory/Forest Stand Delineation ("NRI/FSD," Ex. 23(d)).

The Development Plan, Exhibit 60(a), shows access points, approximate locations of existing and proposed buildings and structures, preliminary classification of dwellings by number of bedrooms, parking areas, some intended right-of-way dedications, and areas intended for common use but not public ownership (the small recreation area on Road B and the stream valley). During the hearing, the Hearing Examiner initiated a discussion of the binding nature of a Development Plan, explaining to the Applicants and counsel that anything intended to be illustrative, rather than binding, should be so noted on the plan. This resulted in the submission of a revised Development Plan after the hearing, which made several changes limiting the binding nature of the features shown on the Development Plan. In its current form, the binding nature of the Development Plan is subject to the following limitations, which the Hearing Examiner finds to be overly broad:

1. The Development Plan specifies that "Lot sizes and shapes and building locations are for illustration only and may be further revised at subsequent Preliminary and Site Plan proceedings."

2. Green area shown covers approximately 46 percent of the site, but the text of the Development Plan states that green area may be reduced, provided that the statutory requirement of a minimum of 30 percent green area is met.

3. A textual binding element specifies that the development will have a single access point on Bel Pre Road, and *no more than two* access points on Homecrest Road. This suggests that one of the two Homecrest Road access points shown on the Development Plan could be eliminated at a later stage of review.

The Hearing Examiner finds that these limitations reduce the Development Plan to a document so lacking in specifics that it is impossible to fully and fairly evaluate compatibility with surrounding uses, compliance with the purpose clause for the zone or master plan consistency. The Development Plan states, without limitation, that “building locations are for illustration only.” A broad, general statement of this kind leaves open the possibility that if the rezoning were approved, the Applicants might present a site plan to the Planning Board and its staff with a totally different site layout than what is currently shown. Similarly, the Development Plan provides for a possible reduction of green area *by more than a third*, from 46 percent of the site to 30 percent. The Applicants may not have fully recognized the implications of this provision. In the Hearing Examiner’s view, it is impossible to anticipate what the Development Plan would look like with such a dramatic reduction in green area. Would it mean eliminating the recreation area on Road B; eliminating the wooded buffer south and east of the duplex units; eliminating the wooded area south of the Vedanta Center expansion; and/or dramatically reducing the size of the front and back yards for individual homes? These questions require an answer.

Finally, the Development Plan leaves open the possibility that one of the two access points shown on Homecrest Road could be eliminated. This makes it impossible to evaluate consistency with the Master Plan, which proposed as one of its main objectives for the area of the subject site an internal roadway that would begin in the northwest corner of this property. The promise of that roadway appears to have played a significant role in Technical Staff’s evaluation of master plan compliance, so the potential for its elimination undercuts Staff’s support for the application as well as that of the Planning Board, which relied on the Staff Report. The possible elimination of one of the Homecrest Road access points could also have impacts on the safety, adequacy and efficiency of vehicular circulation that have not been specified and, therefore, cannot be fully assessed.

The Applicants appear to labor under a fundamental misapprehension of the District Council’s role in this case. The Montgomery County Zoning Ordinance specifies that in certain

zones (mostly planned development and transit station zones), development is permitted “only in accordance with a plan approved by the district council at the time the land is classified” in one of these zones. Code § 59-D-1.1. The zones that require a development plan generally do not include the type of strict development parameters that are imposed in other zones, for example maximum building heights and minimum building setbacks. They do, however, require the submission of a development plan, which “must clearly indicate how the proposed development meets the standards and purposes of the applicable zone.” Code § 59-D-1.3. The Zoning Ordinance specifies that a development plan must show general locations of points of access, the locations and uses of all buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, the location of parking areas and number of spaces, the location of land to be dedicated to public use, and the location of land intended for common or quasi-public use but not proposed for public ownership. Code § 59-D-1.3(a) – (c). These submission requirements ensure that the Council has enough information about the proposed development to fully assess its compatibility and compliance with applicable requirements. The Zoning Ordinance further specifies that “[a] site plan that is consistent with the approved development plan must subsequently be approved in accordance with the requirements of Division 59-D-3 [(which establishes parameters for Planning Board review and approval of site plans)] prior to the issuance of any building permit.” Code § 59-D-1.2.

Thus, the legislative framework for the zones that require submission of a development plan at the rezoning stage assigns to the District Council the responsibility to evaluate the submitted development plan, not just the concept of applying the proposed zoning classification to the land in question. To fully carry out that evaluation, the Council must have enough hard data to assess whether the proposed development satisfies the standards and purposes of the zone, complies with the Master Plan, and would be compatible with surrounding uses. At a minimum, this must include the information specifically required in a development plan, such as the locations proposed for buildings and points of access. In recognition of the need for some measure of

flexibility at site plan to respond to field conditions, the Council has, in the past, approved development plans that specified that *exact* building locations or the *exact* location of an access point were illustrative. Approximate locations, or building envelopes, can provide a sufficient basis for evaluation of a proposed development at the zoning stage. In the present case, however, the application lacks even that level of detail. The submitted Development Plan leaves open the potential for a complete site re-design, a reduction of green area by as much as one third, and the potential elimination of one of two access points shown on Homecrest Road. This is unacceptable.

In addition to the major flaws described above, the Development Plan contains a number of more minor deficiencies that must be addressed if this plan moves forward. These deficiencies are described in detail below.

1. Textual binding element No. 1 states that the number of units will not exceed 39, including the existing Vedanta Center guest house. The General Notes are written in more exact terms: 21 single-family detached units, 12 duplex units and six townhouses. During the hearing, Applicants' counsel indicated an intention to revise the General Notes to provide for "up to" the number of each unit type specified; the failure to make that change may have been a simple oversight. If the Applicants' intention is to leave the Planning Board the discretion to reduce the number of units, if necessary, during subdivision or site plan review, the General Notes must be changed to allow for that possibility.

2. Textual binding element No. 3 states that the addition to the Vedanta Center will not exceed 6,500 square feet of gross floor area. The graphic portion of the Development Plan depicts the proposed worship space addition with an approximate size of "6,000± SF." The "Development Program" (phasing) description describes the Vedanta Center expansion as "6,500± SF." These inconsistencies between text and graphics must be rectified to avoid confusion. The approximate size of the addition must be shown consistently, and must not be shown (as it currently is in the phasing program) with the possibility of exceeding the maximum square footage indicated in the textual binding element.

3. Textual binding element No. 4 states that fencing and landscaping “as shown on the Development Plan along Homecrest Road (within 10 feet of lot lines) shall be maintained by the Homeowners Association.” This is consistent with testimony during the hearing, which indicated that the HOA would ensure uniform fencing and landscaping between the rear yards of the new homes and Homecrest Road. The Hearing Examiner, however, could not find any indications on the submitted Development Plan of fencing or landscaping along Homecrest Road. The graphic portion of the Development Plan and the textual binding elements must be consistent.

4. As noted above, a development plan is required to show all property intended for dedication to public use. The Development Plan submitted here shows very clearly the intended road right-of-way dedications for Roads A, B and C, including the possible future extension of Road C along the full length of the northern boundary. It does not clearly show, however, the intended right-of-way dedication along Homecrest Road that was described during testimony. This omission must be rectified.

5. As discussed in more detail in Part III.F.2. below, the 50-foot right-of-way dedication shown for Road C may not be sufficient to build the access road that the Master Plan envisioned at this location. A finding of Master Plan compliance cannot be made without sufficient right-of-way dedication to ensure enough land to carry out this important Master Plan objective.

An additional flaw on a separate document relates to the NRI/FSD, Exhibit 23(d). The Zoning Ordinance specifies that a development plan must include “a natural resources inventory prepared in accordance with a technical manual adopted by the Planning Board. . . .” Code § 59-D-1.3(a). The submitted NRI/FSD does not show MNCPPC approval, nor does it have a professional certification that it was prepared in accordance with a technical manual adopted by the Planning Board. A memorandum from Environmental Planning Staff at the MNCPPC (attached to the Staff Report, Ex. 28) states that the NRI/FSD was approved on June 6, 2005. A copy of the approved document should be submitted into the record if this project goes forward.

F. Master Plan

1. Summary of Objectives and Recommendations

The subject property lies within the area covered by the *1994 Approved and Adopted Aspen Hill Master Plan* (previously defined as the “Master Plan”).⁷ The Master Plan states the following with regard to its vision (Master Plan at 3):

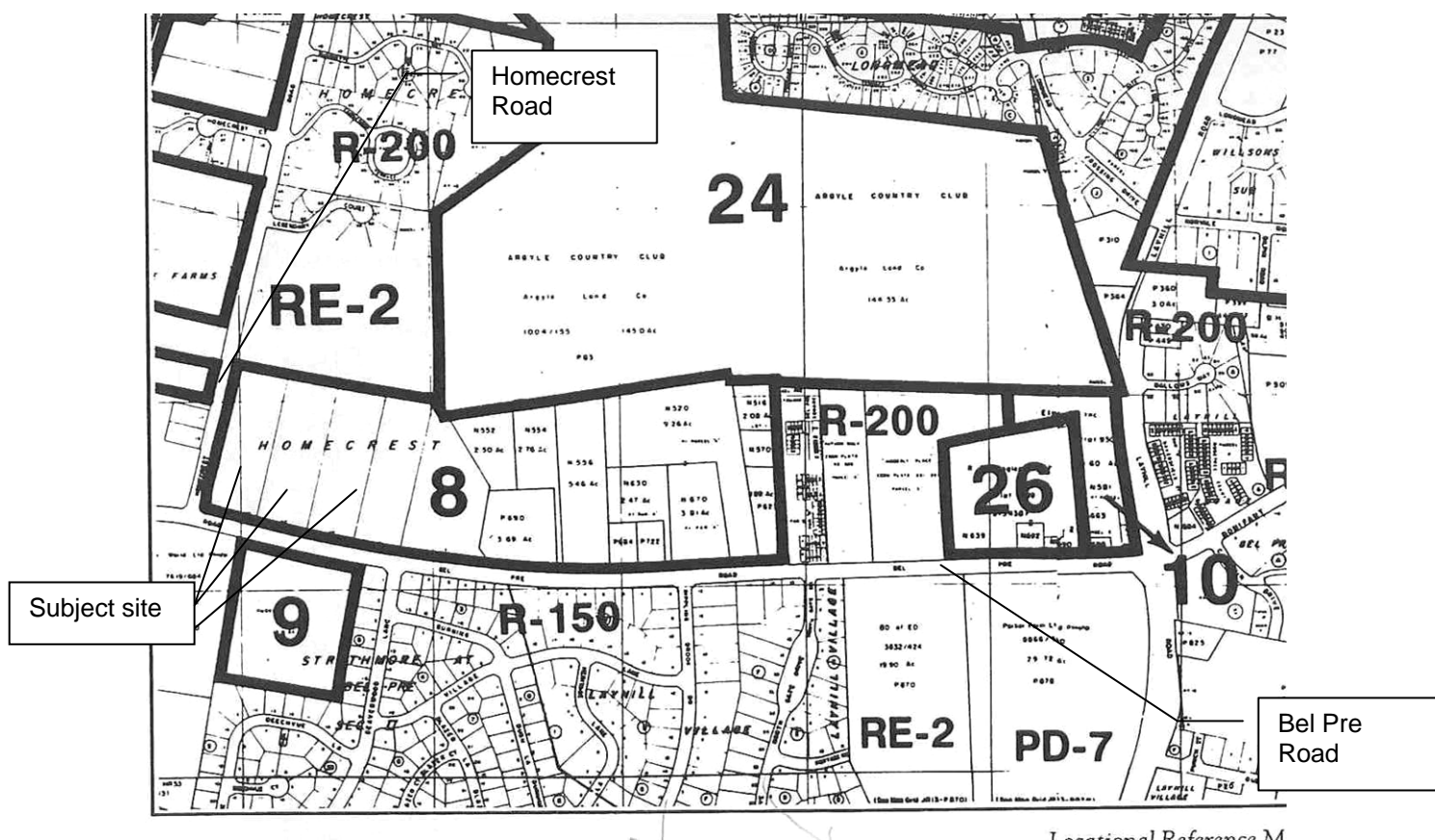
The Plan reinforces the primarily suburban and residential character of the Aspen Hill area by retaining its residential zoning with relatively few refinements. The Plan seeks to increase opportunities for community interaction. It looks to reduce the social and sometimes physical isolation of various neighbors through both public investment and physical designs of private activity.

The Master Plan states a number of broad goals. The housing goal is stated thus: “Encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles and physical capabilities at appropriate densities and locations.” Master Plan at 21. The environmental goal is to “[c]onserve and protect natural resources to provide a healthy and beautiful environment for present and future generations.” *Id.* at 22. Stream quality, wetland protection and reduction of flooding are specific issues addressed in the plan, and in particular the prevention of further degradation of stream quality and erosion. With regard to community identity and design, the Master Plan states as its goal to “[p]rovide for attractive land uses that encourage opportunity for social interaction and promote community identity.” *Id.* The plan identifies the advancement of social interaction and community identity as a major issue, with many goals and strategies aimed at this objective. These include design improvements to increase connectivity between residential neighborhoods, guidelines for special exceptions and the retention of publicly-owned sites for future community facilities. *Id.*

⁷ There are in circulation two versions of the Master Plan that have identical text and maps and the same date. One is in a vertical format and the other is horizontal, so their page numbers are different. The Hearing Examiner, like Technical Staff and Mr. Kauffunger, refers to the page numbers in what appears to be the final published edition (in vertical format). Mr. Perrine referred to the “Interim Edition,” which, based on testimony from a community member, is the version that MNCPPC commonly supplies when a request for a copy of the Master Plan is made. The record contains a complete copy of the Interim Edition and excerpts from the final edition.

The Master Plan divides its geographic range into planning areas. The subject property is within the area designated the “Bel Pre Road Area.” As shown on the map on the next page, this area was along the northern side of Bel Pre Road between Homecrest Road and the Bel Pre Square townhouses (across from North Gate Drive). The Bel Pre Road Area measured approximately 63 acres, and contained the Wheaton Moose Lodge, single-family detached homes and a nursing home. The Master Plan described the history of individual local map amendments in this area, as discussed in Part III.B. above. It also noted that the area was environmentally sensitive, with most properties containing or draining into Bel Pre Creek, a high-quality stream.

Bel Pre Road Area, Area 8. Master Plan Figure 16, p. 52.

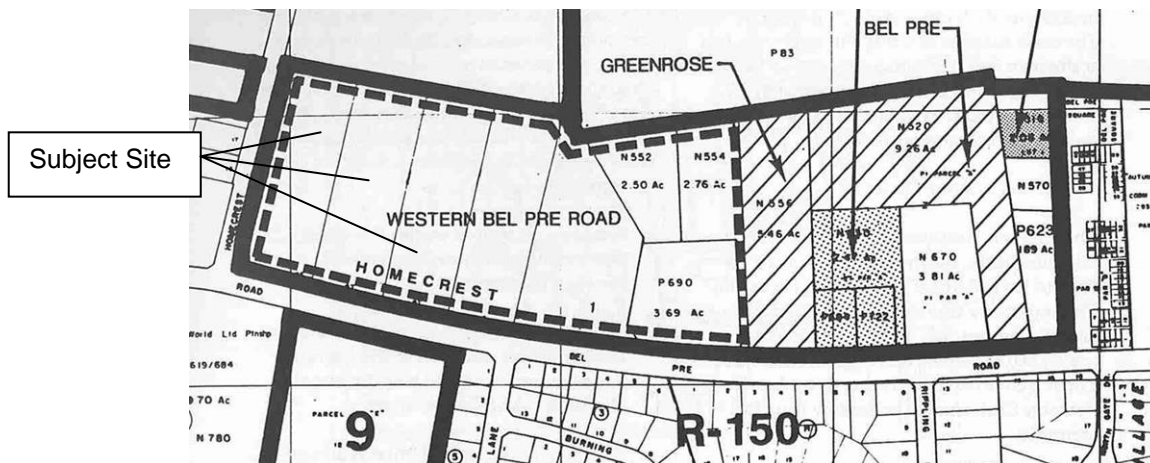


The Master Plan recommended a higher density zoning than RE-2 to encourage consolidation of parcels, which would minimize the number of entrances onto Bel Pre Road and facilitate the creation of an internal road network that would minimize the impact of development

on Bel Pre Creek. Master Plan at 51. The Master Plan identified three issues to be addressed at the time of development: Bel Pre Creek should be protected for recreational trout populations; 17 acres of stream buffer should be delineated and left undisturbed; and on-site storm water management should be provided for water quality and quantity, with joint facilities for several parcels where possible. *Id.*

Within the Bel Pre Road Area, more detailed recommendations were provided for five subsections, including the Western Bel Pre Road section (shown below), which included the subject property and, moving to the east, the Moose Lodge property, an adjacent undeveloped parcel, and three abutting parcels in single-family residential use. The Master Plan recommended retaining the existing RE-2 zoning for all properties *not* zoned R-200. Master Plan at 54. It further recommended the PD-2 Zone for any assemblage of at least ten acres within the western Bel Pre Road Section. *Id.*

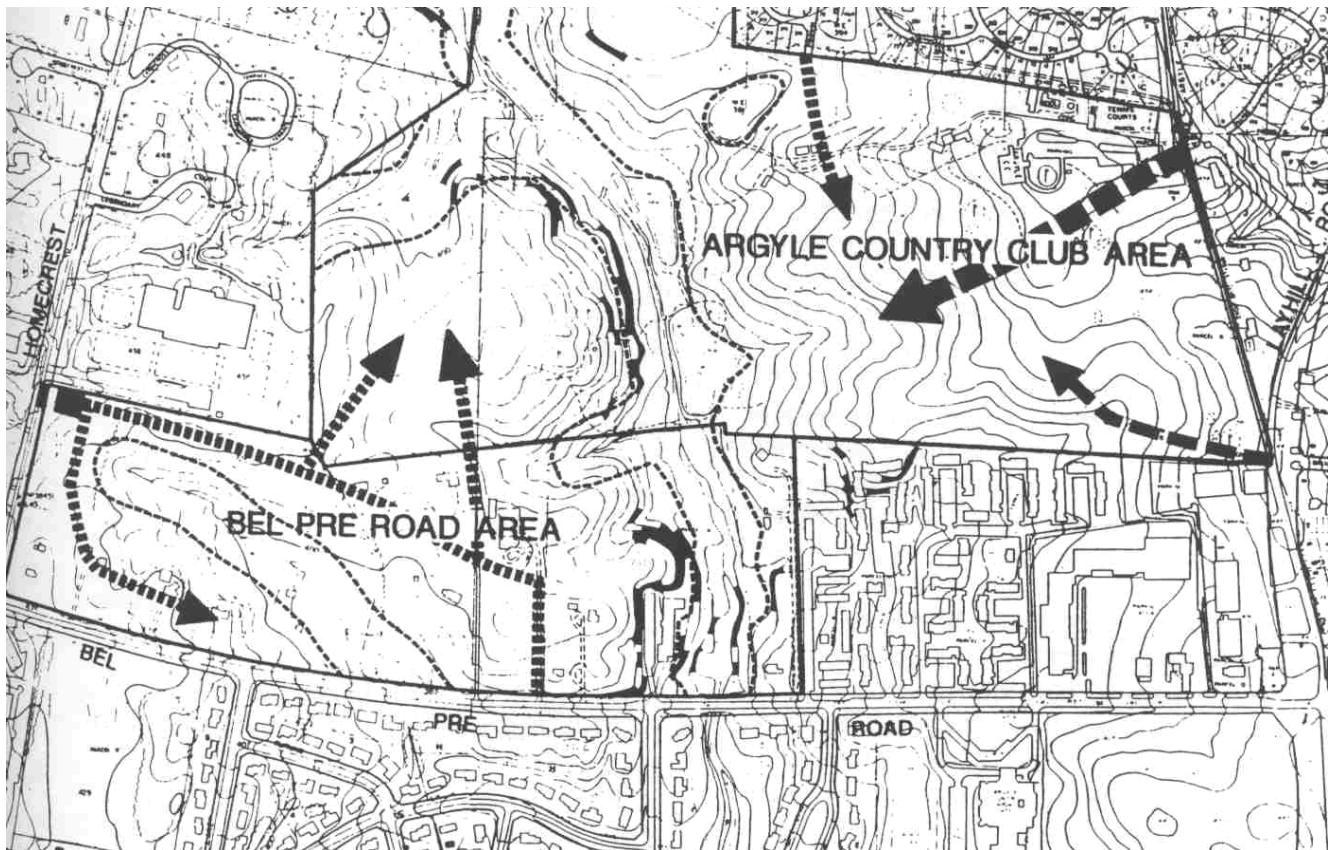
Bel Pre Road Area Subsections, Master Plan Figure 18, p. 55



The Master Plan also provided detailed transportation recommendations, including recommendations for internal roadways in the Bel Pre Road Area and the adjacent Argyle Country Club Area, if the country club were to be redeveloped for residential use. The Master Plan noted that Bel Pre Road between Georgia Avenue and Layhill Road (which includes the subject property) “is at the ultimate capacity for an arterial road.” Master Plan at 236. It stated that some properties on the north side of Bel Pre Road between Homecrest Road

and Rippling Brook Drive should have a combined access plan “to avoid the safety hazards imposed by having numerous driveways along a busy roadway.” *Id.* The plan recommended providing access to Bel Pre Road properties through a combination of secondary residential and/or tertiary streets, with one point of access through a small development that was then in the planning stages (now known as Bel Pre Estates, located slightly west of Rippling Brook Drive on the north side of Bel Pre Road), and another on Homecrest Road. The latter would permit traffic to enter Bel Pre Road at a signalized intersection. The approximate locations proposed for these internal roads are shown on the map below.

**Master Plan Proposed Access Plan for Bel Pre Road Area/
Argyle Country Club Area. Master Plan Figure 55, p. 237**



The Master Plan recognized that the proximity of the proposed access point on Homecrest Road to the existing entrance for the Racquet Club adjacent to the north could raise safety questions. The plan stated that if the Department of Transportation and Public Works

(“DPWT”) deemed the proximity of the two entrances to be a safety hazard, the new access street off of Homecrest Road should still be built, but it should also provide access to the Racquet Club. The Master Plan specifically recommended that the new road be built to primary residential street standards from Homecrest Road to an access point for the Racquet Club, and from there continue as a secondary residential street in a circuitous alignment, ultimately intersecting Bel Pre Road opposite Rippling Brook Drive. Master Plan at 238. The Master Plan emphasized the need for particular review of traffic safety issues in the area, as seen in the following paragraph (Master Plan at 238):

In the future, MCDOT should continue to monitor traffic speeds and accidents on Bel Pre Road, especially in the vicinity of Homecrest Road, and take appropriate action to improve and maintain safety. M-NCPPC should work closely with MCDOT in the review of preliminary plans of subdivision, zoning applications and other development cases to minimize the need for new driveways and to achieve safe locations for new access points to Bel Pre Road when they are necessary.

2. Analysis

Technical Staff concluded that the proposed rezoning would be consistent with the goals and recommendations of the Master Plan. Staff noted that Road C, shown on the Development Plan along the northern property line, would respond to the Master Plan’s recommendation for an internal road network to minimize both development impacts on Bel Pre Creek and the number of entrances on Bel Pre Road. Staff Report at 15. This finding is qualified, however: Staff states that the 50-foot right-of-way proposed for dedication “is consistent with the goal of the master plan if the DPWT considers the proposed roadway to be adequate for the number of units in the proposal.” Staff Report at 16. Staff suggests that “consolidation or widening of the street to a primary standard at this location can be accommodated at the time a new entrance or consolidation of entrances is need[ed] when the adjoining Racquet Club property redevelops.” *Id.* Transportation Planning Staff’s memorandum includes a minimum 50-foot dedication along the northern boundary line among its recommendations for preliminary plan review, but the memorandum lacks any analysis of why

this dedication was considered adequate. See Transportation Planning Staff memorandum dated October 3, 2005, attached to Staff Report, Ex. 28 (the "Transportation Staff Memo").

The Applicants' land planner, Mr. Perrine, opined that the Development Plan conforms to the Master Plan recommendations, both general and specific. He noted that it proposes a variety of housing types, lot sizes and price points, including both market rate and MPDU homes. Mr. Perrine opined that the proposed development would do a good job of encouraging a variety of housing types, by reinforcing single-family detached housing in an area that is surrounded by senior housing, townhouses, garden apartments and scattered single-family detached homes. He stated that the expansion of the Vedanta Center would provide an attractive building with unique architecture, creating a community with a distinct character and identity, which would be enhanced by the walkways connecting the uses to each other and to surrounding areas. He noted that the project proposes an assemblage of 16 acres, and would minimize access points along Bel Pre Road by reducing the number of curb cuts from two to one. It would also provide the right-of-way necessary for an access road along the full northern boundary of the site if adjacent properties are developed.

Addressing the Master Plan's environmental concerns, Mr. Perrine noted that the Development Plan preserves the 125-foot stream valley buffer, which would be an "accessible, undisturbed recreation area that that can be shared by all residents, as well as visitors to the Vedanta Center." Ex. 28(d) at 9. Mr. Perrine acknowledged during his testimony that no paths are proposed within the stream valley buffer, for environmental protection reasons, so the primary access to the stream valley buffer would be visual. Tr. at 83-84. He also noted that forest conservation requirements would be met on site, and that all the uses would have a shared, on-site storm water management system for both quality and quantity control.

Community member Richard Kauffunger, who served on the Citizen's Advisory Committee for the Master Plan, reviewed a series of concerns about Master Plan compliance, the first of which was the integration of MPDUs into communities. He referred to the first page

of text in the Master Plan, which states that the plan seeks to increase opportunities for community interaction and reduce the social and sometimes physical isolation of various parts of the community through public investments and the design of private developments. Mr. Kauffunger suggested that placing the MPDUs together in one corner of the proposed development would remove them from the rest of the community, rather than spreading them throughout the development so they look like the other houses. (Mr. Perrine responded on rebuttal that the small size of this development made a more integrated approach impractical.)

Drawing on his experience in working on the Master Plan as a member of the Citizens' Advisory Committee, Mr. Kauffunger stated that the recommended zoning for the western part of the Bel Pre Road Area was kept at RE-2 to give the County the leverage of potential higher density, as a way to get developers to build internal access roads. He acknowledged that the proposed Development Plan depicts a roadway in the right location, but objected to the size of the proposed dedication. Mr. Kauffunger noted that a 50-foot right-of-way is consistent with a tertiary residential road, but is not enough for the secondary road recommended in the Master Plan; a secondary road calls for a 60-foot right-of-way.

The Hearing Examiner shares Mr. Kauffunger's concern about the width of the dedication proposed for Road C, particularly because Transportation Planning Staff provided no analysis to support its statement that a minimum 50-foot dedication should be provided. It may be that Transportation Planning Staff drew this conclusion with the expectation that a wider dedication could be required at a preliminary plan or site plan review, if needed to provide for a wider entrance and access to the Racquet Club. However, one of the requirements for a development plan under Section 59-D-1.3 is that it show all areas intended for dedication to public use. The area intended for dedication for Road C is shown quite specifically with a width of 50 feet. If that is intended as a minimum, with the possibility that it may increase at a later stage of review, it should be so depicted.

As discussed in Part III.E. above, the Hearing Examiner additionally finds the Development Plan's treatment of Road C unsatisfactory because it makes the vague suggestion that construction of the road is uncertain.

As discussed in more detail in Part V.A.(a) below, the Hearing Examiner finds that the proposed Development Plan is consistent with the Master Plan's other objectives and recommendations.

G. Environmental Issues and Storm Water Management

Environmental Planning Staff reports that the Preliminary Forest Conservation Plan meets the basic parameters of the forest conservation law and the Planning Board's Environmental Guidelines, and recommends approval of the application. Environmental Planning memorandum attached to Staff Report, at 2. All forested areas in the stream valley buffer would be preserved, as well as additional wooded areas adjacent to the stream valley buffer, and small wooded areas between the duplex units and the new Vedanta Center building to the northwest, the Moose Lodge to the east, and Bel Pre Road to the south. The proposed development would clear 4.9 acres of forest cover, requiring a small amount of on-site reforestation. This would be accomplished principally by planting additional trees on the edges of existing wooded areas, where construction activities would remove some existing trees.

Technical Staff notes that the subject property contains 93 specimen and significant trees, all but 24 of which are outside of the stream buffer. Staff states that the Applicants have "made a commitment to preserve some of the large trees outside the stream buffer in keeping with the intent of the zone," and that minor changes to the site design would be required during site plan review to protect these trees. No floodplains or wetlands exist on the site.

Storm water management facilities are proposed for the subject site with several different elements: surface sand filters, bio-retention devices, an underground filtering system and a pond for water quantity control. These facilities would collect and filter all of the run-off from the entire site, replacing the existing storm water management facility for the Vedanta Center. An

earlier version of the storm water management concept that corresponded with a previous development plan was approved by DPS, which noted that six of the proposed lots (the MPDU lots) are too small for dry wells, so the Applicants would have to find another approach or seek a waiver of quality control for those units. The Applicants' engineer stated during the hearing that a waiver would not be necessary, because other methods can be used to serve the same function.

H. Public Facilities

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), an assessment must be made as to whether the transportation infrastructure, area schools, water and sewage facilities, and police, fire and health services will be adequate to support a proposed development, and in turn, whether the proposed development would adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process. The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that the County Council sets each year in the Annual Growth Policy ("AGP") and biennially in the two-year AGP Policy Element.⁸ While the final test under the APFO is carried out at subdivision review, the District Council must first make its own evaluation as to the adequacy of public facilities in a rezoning case, because the Council has primary responsibility to determine whether the reclassification would be compatible with the surrounding area and would serve the public interest. The Council's evaluation of public facilities at the zoning stage is particularly important because of the discretionary nature of the Council's review, and the fact that the Council's review is much broader at the zoning stage than what is available to the Planning Board at subdivision, a process designed to more intensively examine the "nuts and bolts" of a development. The District Council is charged at the zoning stage with determining whether the proposed development would have an

⁸ See *2003-05 Annual Growth Policy – Policy Element, Resolution No. 15-375*, adopted October 28, 2003, which remains in effect. The Hearing Examiner hereby takes official notice of the 2003-05 AGP Policy Element.

adverse impact on public facilities and, if so, whether that impact would be mitigated by improvements reasonably probable of fruition in the foreseeable future.

1. Transportation

Under the 2003-05 AGP Policy Element, which remains in effect, subdivision applications are subject to only one transportation test, Local Area Transportation Review ("LATR").⁹ The Planning Board recognizes its LATR Guidelines as the standard to be used by applicants in the preparation of reports to the Hearing Examiner for zoning cases. LATR Guidelines at 1. LATR involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion at nearby intersections during the peak hours of the morning and evening peak periods (6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.).

The Applicants performed a traffic study as required in this case, taking into account existing roads, programmed roads and available or programmed mass transportation, as well as existing traffic, traffic anticipated from nearby development that is approved but unbuilt ("background" traffic), and trips expected to be generated by the proposed development. The traffic study anticipated no new trips from the Vedanta Center expansion, because the Center does not have activities during the morning and evening peak hours. With 38 new dwelling units, the proposed development is expected to generate a total of 33 additional trips during the weekday morning peak period and 41 additional trips during the weekday evening peak period. The traffic study concluded, and Technical Staff agreed, that with the proposed development in place, critical lane volumes ("CLVs") at the key intersections studied would remain below the CLV standard of 1,500 for the Aspen Hill Policy Area. See Ex. 27(c) at 19; Transportation Staff Memo.

The traffic study was prepared based on the premise that the Vedanta Center would not generate any peak hour trips, because the Center does not have activities during the morning

⁹ See 2003-05 AGP Policy Element at 6-7; *Local Area Transportation Review Guidelines Approved and Adopted July 2004* ("LATR Guidelines") at 1. The Hearing Examiner hereby takes official notice of the LATR Guidelines.

and evening peak hours. Transportation Planning Staff recommended that the local map amendment be limited to the 38 dwelling units proposed and a 6,000± square foot expansion of the Vedanta Center, and that the rezoning “[l]imit regularly scheduled activities and programs associated with the house of worship to exclude a weekday child daycare facility, a weekday private school, or any other [sic] program that would generate daily peak-hour vehicular trips within the weekday morning and evening peak periods. . . .” Transportation Staff Memo at 2. The Development Plan now proposes to expand the Vedanta Center by up to 6,500 square feet, a relatively minor increase above the size recommended in by Transportation Planning Staff. The more significant item is the recommendation to “limit” the local map amendment by prohibiting the Vedanta Center from adding a child day care facility and/or a school to its operations. Imposing such a limitation would risk running afoul of the prohibition against conditional zoning that was developed by the courts and is stated in Section 59-H-6.4 of the Zoning Ordinance. In a zone that is eligible for the optional method of development under Section 59-H-2.5, the legal parameters are different, because the Zoning Ordinance expressly provides that an applicant for rezoning who elects the optional method of application may choose to limit the uses to be conducted on the site. No such provision exists for the PD Zone, which is not eligible for the optional method of application.

The Hearing Examiner does not view Transportation Staff’s reliance on the recommended condition as fatally undercutting Staff’s overall recommendation. The entire construct of the PD Zone, including the purpose clause and the development standards, is based on the premise that the development must be coordinated, integrated, and approved in its entirety by the District Council. The addition of a new use such as a child day care facility or a private school would require a Development Plan Amendment approved by the District Council, which would give Technical Staff and the District Council the opportunity to consider the traffic impacts of the use at that time. Thus, the condition Transportation Staff recommended is unnecessary to justify the traffic generation assumed in the traffic study. Moreover, Technical Staff notes that the

addition of a new traffic generator would require a subdivision amendment to allow new APFO testing. See Ex. 33.

One week after the date of the Transportation Memo, the State Highway Administration ("SHA") submitted a comment letter to Transportation Planning Staff recommending a substantial expansion of the traffic study. SHA noted that according to the submitted traffic study, 70 percent of the site-generated traffic is expected to use either MD 97 (Georgia Avenue) at Connecticut Avenue or MD 97 at Bel Pre Road, and 25 percent is expected to use the MD 182 (Layhill Road)/Bonifant Road intersection. SHA recommended that the applicant be required to add an analysis of these three intersections to its traffic study. See letter from Steven D. Foster to Shahriar Etemadi dated October 10, 2005, attached to Staff Report.

Technical Staff rejects SHA's recommendation, noting that it would go well beyond LATR requirements, which direct an applicant to analyze only the first signalized intersection in each direction, if the weekday peak-hour trips are between 30 and 250. Staff notes that SHA did not provide a reason for the extra analysis it recommends, that the three intersections listed are each roughly a mile from the subject site, and that the practical impact of the proposed development would be very small, considering the scale of the intersections (the proposed development would add a total of 29 trips to the two Georgia Avenue intersections, and 11 to the Layhill Road intersection). See Ex. 43.

The Applicant's transportation planner, Wes Guckert, described Homecrest and Bel Pre Roads and explained the basis for his opinion that the proposed access points would be safe, adequate and efficient. He stated that north of proposed Road A (the access point closer to Bel Pre Road), Homecrest Road is a two-lane roadway about 20 to 21 feet wide. From Road A south to Bel Pre Road, Homecrest Road widens to three lanes, about 37 feet wide, with two lanes approaching the traffic signal at Bel Pre Road. Mr. Guckert noted that the Master Plan describes Homecrest Road as a secondary road, but it is posted with a speed limit of 25 miles per hour ("MPH"), indicating that it functions as a tertiary road. Road A is proposed to line up with the driveway

entrance for the senior housing across Homecrest Road. Road C is shown adjacent to the northern property line.

Mr. Guckert stated that Bel Pre Road at this location is a five-lane roadway, with two through lanes in each direction plus a center turn lane. He noted that it has approximately 57 feet of pavement, which is slightly below the typical 60-foot standard for a five-lane road. Instead of five 12-foot travel lanes, Bel Pre Road has one lane that is 11 feet wide, and a ten-foot-wide center turn lane. The posted speed limit is 35 MPH. The proposed Development Plan shows one access point on Bel Pre Road, about midway between Homecrest Road and the next road to the east, Beaverwood Lane.

Mr. Guckert reviewed sight distance measurements for each of the proposed access points, and concluded that all meet or exceed county standards, with two requirements to ensure adequate sight distance at the Bel Pre Road entrance: (1) a utility pole located near the proposed entrance might have to be moved north, into the site, by about five feet; and (2) heavy vegetation near the proposed entrance, on the subject site, would need to be cut back. The required sight distance at each location and Mr. Guckert's sight distance measurements are shown in the table that follows.

Sight Distance Measurements

| Access Point | Sight Distance Required | Sight Distance As Measured by Guckert | |
|--------------|-------------------------|---------------------------------------|---------|
| | | Right | Left |
| Bel Pre Road | 400 ft. | 530 ft. | 550 ft. |
| Road A | 250 ft. | 747 ft. | 290 ft. |
| Road C | 250 ft. | 255 ft. | 824 ft. |

Mr. Guckert explained that under standards used in Montgomery County and elsewhere, sight distance is measured at a driver's eye level – 3 ½ feet off the ground, six feet back from the edge of the road, looking at an object about 2 ¾ feet down the road. He further stated that he applied the sight distance requirement for a 35 MPH speed limit to Homecrest Road because that is the speed limit for the roadway classification recommended in the Master Plan. He noted, however, that the road is actually posted for 25 MPH, indicating that the government believes that is

the speed people should drive. At that speed, the required sight distance would be only 200 feet, which the Road C access point can easily satisfy.

Mr. Kauffunger testified about his own sight distance measurements and presented written evidence indicating that he followed standard Montgomery County procedures. See Ex. 49. He testified as a lay person, but stated that he is trained as a scientist, and that he learned how to do traffic studies and measure sight distances from Dr. Everett Carter, who was a professor in the highway engineering department at the University of Maryland (Mr. Guckert confirmed Dr. Everett's position with that institution). Mr. Kauffunger stated that he has a long history of working on traffic problems; he collected the information necessary to justify a traffic light at the intersection of Homecrest and Bel Pre Roads, and he spent several years persuading the County to put a stripe down the middle of Homecrest Road.

Mr. Kauffunger found that the sight distance at the proposed Bel Pre Road access point "technically met the standards," but only during cold weather months, when deciduous plants don't have their leaves. He measured the sight distance at the Road C access point at 248 feet, just shy of the required 250 feet. Mr. Kauffunger based his measurements on a speed of 35 MPH, based on information he obtained from DPWT indicating that the 85th percentile speed on Homecrest Road (the speed which 85 percent of people drive at or below) is between 34 and 39 MPH.¹⁰ Mr. Kauffunger contended that the County's methodology for measuring sight distances is flawed, because it is neither highly accurate nor highly reproducible. He argued that many cars travel above 35 MPH on Homecrest Road and that because of a hill north of the proposed Road A access point, cars exiting Road A would not be able to see fast-moving southbound traffic on Homecrest Road soon enough to stop. A community member whose elderly father lives across Homecrest Road from the subject property supported this argument with her own similar observations.

¹⁰ As observed by Mr. Guckert, the "85th percentile speed" normally is expressed as a single number, not a range.

Mr. Guckert suggested that Mr. Kauffunger might have gotten a different measurement at the Road A access point because he was six and a half feet back from the curb rather than six feet. He emphasized, moreover, that he does not consider the difference between 238 feet and 255 feet to be significant in this context. Mr. Guckert noted that sight distance measurements of this nature are not done with the absolute precision of a survey measurement, and that formal sight distance certification takes place at a much later stage of development, based on the actual road profile.

Mr. Guckert agreed that the hill on Homecrest Road limits sight distance to the north, and opined that the speed limit was set at 25 MPH because of that hill, to encourage cars to travel more slowly. He suggested that Homecrest Road might benefit from some traffic calming measures, such as a flashing speed limit sign. When asked the purpose of Road C, Mr. Guckert stated candidly, "From my perspective, the purpose is to meet the Master Plan." Tr. at 126. Mr. Guckert explained that Road C is not necessary from a traffic engineering standpoint, although it would be convenient for homes at the north end of the proposed development. He noted that if the project proceeds, DPWT may tell the Applicants not to build Road C for safety reasons, regardless of the Master Plan, which would be "fine with us. We can go out another way." Tr. at 224.

At this preliminary stage, without actual road profiles and final grading, the Hearing Examiner is persuaded by the preponderance of the evidence that sight distances are adequate to support the zoning request. The more authoritative of two measurements founds that all sight distances meet county standards, and even Mr. Kauffunger found only a deficiency of less than one percent of the required distance. Moreover, Road C is the least important of the three proposed access points for purposes of this development (setting aside, for the moment, the question of Master Plan compliance). If DPWT were to make a decision at a later stage that Road C cannot be built safely at this location, that would not make safe access to this development from Homecrest Road impossible, it would merely require some site redesign. The Applicants would not be relieved of their dedication obligation, which would preserve the land for later use in the event that future

development warrants its use to meet the Master Plan's goals. Another possibility might be designing a single access point on Homecrest Road, near the middle of the subject property's western boundary, which would lead to Road B. From there cars could turn right to reach the southwestern part of the community, or left to reach the northwestern part of the community and Road C. A change of that nature, of course, would require a development plan amendment approved by the District Council. In any event, it is extremely unlikely that sight distance problems would pose a serious obstacle to implementing this Development Plan.

2. Water and Sewer

The subject property is served by public water and sewer. Technical Staff reports that local service is considered adequate and the impact from rezoning would be negligible.

3. Schools

Technical Staff reports, based on information provided by Montgomery County Public Schools ("MCPS"), that the subject property is in the Bel Pre Services Area of the Down County Consortium, which has adequate capacity according to the AGP formula. See Supplemental Staff Report, Ex. 33. The Hearing Examiner takes official notice of the determination by the Planning Board, on June 23, 2005, that under the current AGP Policy Element, for purposes of reviewing subdivisions in FY2006, all school clusters in the County are considered to have adequate capacity.

Based on the preliminary unit mix, Montgomery County Public Schools ("MCPS") expects the proposed development to generate approximately 9 elementary, 6 middle and 7 high school students. See Ex. 33. MCPS data indicate that Bel Pre and Strathmore Elementary Schools are paired schools, which have limited capacity, and that both Argyle Middle School and the high schools in the Downcounty Consortium have capacity.

Thus, in this case both the AGP test and MCPS estimates indicate adequate capacity for the small number of students that would be generated by this project.

I. Support for the Application

The record contains a letter of support from Rocky Lopes, President of the Bel Pre Estates Homeowner's Association, which represents a community of approximately 18 houses located a short distance east of the subject site on Bel Pre Road. Mr. Lopes also testified at the hearing. Both his testimony and his letter demonstrate that the Bel Pre Estates HOA is very pleased with the major revisions that J. Kirby Development has made to the proposed residential development during the pendency of this application, and approves of the current Development Plan. Elements the HOA finds particularly positive are locating the single-family detached homes along an interior road, facing one another, to create a sense of community; locating Road A far enough from the intersection of Bel Pre and Homecrest Roads to be safe; and placing the MPDUs in buildings that will look like the other homes in the neighborhood.

The Bel Pre Estates HOA very much looks forward to the day when Road C will be extended to connect with Big Bear Terrace, a stub road within Bel Pre Estates. This would provide the community with a second means of access, and a way to enter Bel Pre Road at a signalized intersection. The HOA hopes that the road will not be built past the point shown on the Development Plan until the properties between the subject property and Bel Pre Estates are developed, because an empty road would become a lover's lane or hang-out spot.

Mr. Kirby of J. Kirby Development testified that he had numerous meetings with the Bel Pre Estates HOA and the much larger HOA for the Layhill Alliance. Tr. at 247-48. Applicants' counsel stated that a spokesperson for the Layhill Alliance testified in support of the project before the Planning Board. The record contains an email from Mr. Lopes (who is President of the Layhill Alliance as well as of the Bel Pre Estates HOA) to Technical Staff providing the text of comments which, after "resolving dissension and achieving consensus," a spokesperson for the Layhill Alliance would be making before the Planning Board. See email dated October 20, 2005, attached to Ex. 60(d). Those comments stated that while at least one member community in the Layhill area remains concerned about the housing density planned for the subject property, other member

communities feel that the current Development Plan is a big improvement over the original plan, and therefore the Layhill Alliance “is not opposed to this development.” *Id.*

Mr. Lopes submitted an additional letter after the hearing, on behalf of the Layhill Alliance. See Ex. 63(a). This letter stated that the Layhill Alliance serves the homeowner, civic and community associations in the greater Layhill area of Silver Spring, and currently has nine member associations representing 3,356 households.

J. Community Concerns about Development Plan

Six community members testified regarding their concerns about certain elements of the proposed Development Plan: Mr. Kauffunger; Joe Podson, manager of a 280-bed facility for low income seniors and disabled people located diagonally across Homecrest Road from the subject site; Wayne Courtney, representative of the Wheaton Moose Lodge adjacent to the east; Linda Nishioka and her father, Laurence Andrews, who has lived across Homecrest Road from the subject property since 1951; and Max Bronstein, representative of the Strathmore-Bel Pre Civic Association. In addition, Mr. Kauffunger and Ms. Nishioka asked extensive questions of the Applicants’ witnesses, and Mr. Kauffunger, Ms. Nishioka and Mr. Bronstein submitted written comments, after the hearing, on the revised Development Plan that was submitted post-hearing. It is important to note that *no one expressed opposition to the idea of rezoning the subject property to the PD-2 Zone – their opposition is to the configuration of the current Development Plan.*

Mr. Courtney’s comments addressed a potential incompatibility between the sometimes noisy social activities of the Moose Lodge and the close proximity of the proposed duplex units. On the Development Plan presented at the hearing, the closest row of duplex units was depicted about 35 feet from the Moose Lodge building, and closer than that to the property line. Mr. Courtney stated that his organization sometimes has large social gatherings with outdoor activities and large numbers of cars. He suggested that these activities would present problems with residents living so close to the property line. The duplexes have since been moved about 30 feet to the west, behind a wooded buffer.

Mr. Kauffunger, Ms. Nishioka and Mr. Podson share a concern about the number and closeness of the homes proposed along Homecrest Road. These participants feel that with eleven homes facing Homecrest Road, all in a row and quite close together, the visual impact will be one of high density, more like townhouses than single-family detached homes. Ms. Nishioka compared the closeness of the houses to looking out at a 35-foot wall. Mr. Podson noted that some people reside at his facility, Homecrest House, for 15 to 20 years, and many work, volunteer, drive and consider themselves part of the neighborhood, so the visual appeal of the area is important to them.

Mr. Kauffunger made the most detailed presentation of the community participants, including proposing an alternative development plan. Mr. Kauffunger's proposal, reproduced on the next page, uses elements from an earlier version of the Applicants' Development Plan, plus his own ideas:

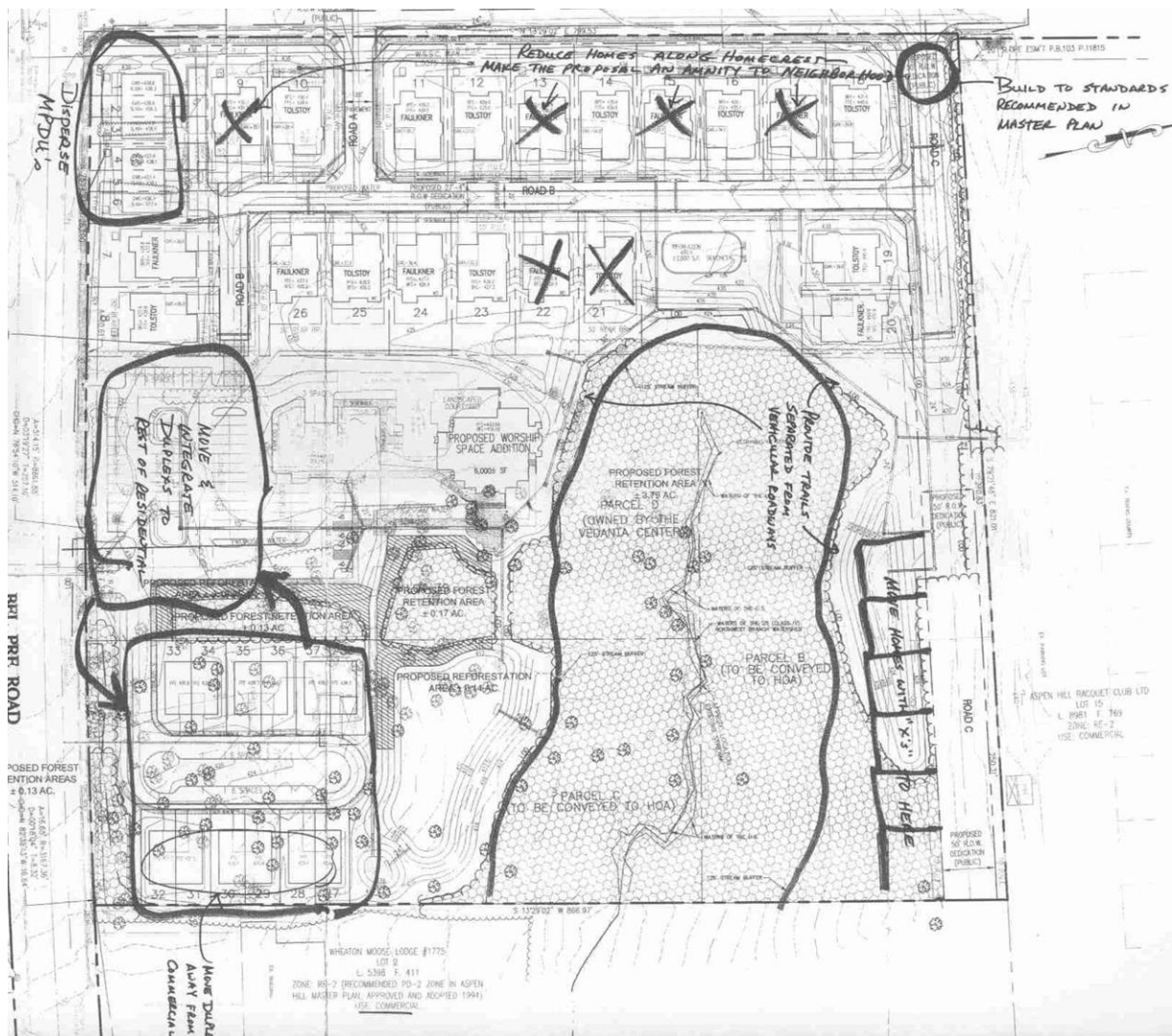
- maximum of seven houses along Homecrest Road, with more green space between them, facing a common internal roadway;
- dispersing MPDUs throughout residential units;
- row of houses in the northwest corner of the site, overlooking the stream valley, with Road C extended all the way to the eastern property line;
- trail around the stream buffer area to provide comprehensive pedestrian circulation network, separated from vehicular roadways, and system of linkages among residential areas, open spaces, recreational areas and worship center;¹¹
- switch the locations of the duplex units and the Vedanta Center parking lot, allowing the duplex units to be better integrated into the rest of the community and buffering them from the Moose Lodge.

There are significant obstacles to achieving Mr. Kauffunger's vision. Technical Staff required the Applicants to remove houses that were shown in the northeast corner of the site, on an

¹¹ This goal is partially achieved on the Development Plan submitted after the hearing.

earlier development plan, for environmental reasons. Technical Staff also refused to permit a trail all the way around the stream valley for environmental reasons. With regard to the duplex units and the parking lot, the Vedanta Center's Mr. Elkman testified in very clear terms that the members of the Center consider their current property, in the middle of the site, to be sacred, and they would object strongly to losing that "open space" in front of their facility. He observed that putting homes directly south of the Vedanta Center would block its facilities from view for those entering the site. He also stated that while the Vedanta Center hopes to limit the occupancy of the duplex units to its members, putting those units directly adjacent to the Center would rob them of any sense of independence, making them feel like they were part of an Ashram, right in the middle of the Center.

Alternative Development Plan Proposed by Richard Kauffunger, Ex. 52



During the hearing, Mr. Kauffunger testified in detail about the importance of Road C in fulfilling the objectives of the Master Plan. He argued that the 50-foot dedication shown on the Development Plan would not be adequate to build a secondary road, as recommended in the Master Plan, so a dedication of at least 60 feet should be provided. To solve a potential sight distance problem at the access to Road C, Mr. Kauffunger suggested building Road C partially on property owned by the adjacent Racquet Club, which is past the bump in the road that hinders the line of sight. In his post-hearing submission, Mr. Kauffunger went farther, recommending that with the opportunity for higher density as leverage, the Applicants should be required not just to provide a dedication for Road C to their eastern border, a distance of roughly 550 feet, but to actually build the road to a distance of 800 feet, in fulfillment of this important Master Plan goal and to alleviate traffic safety issues.

Mr. Kauffunger described it as a dream for residents of this area for development of the subject property to break the “institutional look” that was created by all the nearby special exceptions. With 11 houses on Homecrest Road, however, Mr. Kauffunger feels that would not happen.

Mr. Kauffunger argued that the Development Plan as submitted fails to satisfy several elements of the purpose clause for the PD Zone: because the MPDUs and duplexes are not integrated into the community, the development would not “facilitate and encourage a maximum of social and community interaction”; because the stream buffer (the main open area) would not be accessible to the community, given that there is no parking on the closest street and there are no walking paths,¹² the development would not provide for open space convenient to the public at large; and because the sidewalks are not really designed to link residential areas with open space, the development would not provide for a “comprehensive pedestrian circulation network separated from vehicular roadways, linking residential areas, open spaces and recreational areas.” Tr. at 206-07, quoting purpose clause language.

Mr. Bronstein echoed Mr. Kauffunger's call for Road C to be built, not just dedicated, although it seems that he would limit that obligation to the boundaries of the subject site. See Ex. 64. He contended that sight distance would be inadequate at the proposed Bel Pre Road entrance because of the contours of the road, foliage and a utility pole. (The latter two of these issues were addressed by Mr. Guckert, who stated that his finding of adequate sight distance was contingent on cutting back foliage and possibly moving a utility pole.)

Mr. Bronstein called for switching the location of the duplex units with the Vedanta Center parking lot, for the same reason Mr. Kauffunger cited – to make the duplexes more a part of the community, in keeping with the purposes of the PD Zone. He argued that the Development Plan in its current form has, in essence, three parts: a residential area on the west, a religious use in the center, and a separate, smaller residential area on the east. This, he finds, is not consistent with the purposes of the PD Zone. Mr. Bronstein also recommended reducing density in the western part of the development, which he suggests would allow the MPDUs to be dispersed rather than clustered.

Ms. Nishioka described the Development Plan, in her post-hearing submission, as proposing a “massive block of dense housing” on Homecrest Road, incompatible with the present zoning for low-density, single-family homes and with the intent of the Master Plan to preserve this area of low-density residential use. See Ex. 61. She observed that the neighborhood is a checkerboard of special exceptions, rezonings and construction far beyond planning visions. She suggested that the authors of the Master Plan likely did not envision the size of homes being built today, or the sizes proposed on the Development Plan – footprints roughly 50 feet by 60 feet, and 34 feet in height.¹² Ms. Nishioka noted that these large buildings would be separated by only a few feet, set in a rigid row with their backs to Homecrest Road and a tall privacy fence along the street. [Note: there is no evidence in the record about what kind of fencing would be used.] She

¹² As noted earlier, a path along part of the stream valley edge is shown on the Development Plan submitted after the hearing.

¹³ The current Development Plan provides for maximum residential building heights of 40 feet.

concluded that for someone looking up or down the street, the row of houses would have the appearance of one long structure. She also expects that traffic sounds would be intensified by bouncing off the tall, close buildings, and that her family would lose any view of graceful, rolling land.

Ms. Nishioka cited a provision of the Master Plan recommending sufficient space between Bel Pre Road and the sidewalk to allow a six-foot planting strip, to implement a “green corridors” design. She suggested that the Development Plan should show this sidewalk spacing, because it would affected building locations and perhaps density.

IV. SUMMARY OF HEARING

A. Applicant’s Case in Chief

1. Phil Perrine, land planner. Tr. at 34-74, 76-101

Mr. Perrine was designated an expert in land planning. First, he described the subject property and surrounding area, noting that the area contains a mix of institutional uses and various housing types – a church, a racquetball club, the Wheaton Moose Lodge, single family homes, townhouses, apartments, and senior assisted living housing. Mr. Perrine described the zoning pattern in the area, which is an unusual mixture of blocks of R-200, R-150, RE-2 and RE-2/TDR that resulted from a series of individual rezonings. He noted that the current Master Plan attempted to reconcile the different rezonings and provide a plan for the developed areas by keeping everything in the RE-2 Zone, while recommending the PD-2 Zone for the subject property and undeveloped property east of it.

Mr. Perrine described how the proposed development would satisfy the Master Plan’s goals. It provides for a mixture of housing types and the Vedanta Center, an institutional use. It would provide environmental protection for the nearby tributary to Bel Pre Creek, and would implement the Master Plan recommendation for a road at the north end of the subject property, to eventually connect with Big Bear Terrace. Mr. Perrine explained that between the subject property

and Big Bear Terrace are the Wheaton Moose Lodge and three single family homes on individual lots. The northern road would not be extended through those properties unless they were redeveloped at a higher density, presumably under the PD-2 Zone. Mr. Perrine agreed with testimony of community members who feared that extending the road before development takes place could lead to undesirable activities at the stub end of the road. He noted that the Planning Board would determine the exact extent of construction at preliminary plan review, and that various tools such as covenants and bonds can be used to assure financial participation in that road extension by this development.

Mr. Perrine opined that the proposed development would do a good job of satisfying the Master Plan goal of encouraging a variety of housing types, by reinforcing single-family detached housing in an area that is surrounded by senior housing, townhouses, garden apartments and scattered single-family detached homes. It would serve the Master Plan goal of minimizing curb cuts on Bel Pre Road, by reducing access on Bel Pre from two driveways to one. It would also promote the Master Plan's environmental goals by protecting the on-site stream valley buffer.

Mr. Perrine stated that following input from Technical Staff, the proposed development would create a small, neo-traditional type of community, where neighbors face each other across the street and share a small recreational facility. All of the homes would be accessed from two driveways on Homecrest Road, with a separate driveway for the Vedanta Center and the 12 semi-detached homes (duplex units) on the east side of the property. The townhouses would be accessed from the same internal road that serves the single-family homes, so they would feel like part of the community. The various parts of the development would be connected by sidewalks and a "friendly connection" from the Vedanta Center parking lot to an internal road on the west side of the community. Mr. Perrine described this as a passage that would not look like a regular road, but would provide access for pedestrians and emergency vehicles.

With regard to parking, Mr. Perrine stated that all of the single-family homes would have at least the required two parking spaces. The detached homes would have four spaces each,

with two-car garages plus driveways. The townhouses and semi-detached homes would have one-car garages plus driveways, providing two spaces. The site would also include 12 parking spaces in the center courtyard near the semi-detached homes. Mr. Perrine stated that with a seating capacity of 212, the Vedanta Center is required to have 53 spaces; the proposed Development Plan provides 85.

Mr. Perrine acknowledged that all of the homes would face the interior of the community, with their backyards facing the abutting roads. He stated that landscaping would be planned during site plan review, but the current intent is to have some kind of coordinated design for fencing and landscaping, to create a uniform view along the street frontages. He also observed that the townhouses and apartments across Bel Pre Road from the subject site are set back considerably from the road, suggesting that giving them a view of the rear of new dwellings is not a problem. Tr. at 65.

Mr. Perrine reviewed the purpose clause for the PD Zone in detail, explaining the basis for his opinion that the proposed development would satisfy the purposes of the zone. Tr. at 55-67. He referred to his earlier testimony about Master Plan compliance, reiterating that all the relevant goals would be satisfied. With regard to social and community interaction and a distinctive visual character and mix of uses, he noted a variety of housing types that would allow for different age and income groups among the residents, as well as a pedestrian sidewalk system providing good access to the shared recreation area. He also noted that Technical Staff emphasized the importance of having all of the houses face an internal neighborhood street, to create a nice sense of community. In addition, houses backing onto the stream valley would share the green space view. Mr. Perrine noted that the proposed development includes all of the housing types permitted in a PD Zone development of this size. He cited forest retention, reforestation and stream valley preservation in response to the purpose clause element focused on preserving trees and limiting grading. He noted, in particular, that Technical Staff had stressed a need to preserve a stand of trees along Bel Pre Road in the southeast corner of the property. The development plan protects

those trees by providing for a retaining wall to protect them from the effects of grading and earth disturbance.

With regard to minimizing reliance on cars, Mr. Perrine cited the sidewalks leading through the community and to the abutting roads. They would provide access, among other things, to bus stops and to the Layhill Road commercial area, which is about three quarters of a mile away. Mr. Perrine described the scale of the project as appropriate to the setting and the Master Plan's objectives, noting that three different housing types and an institutional use would all be compatibly provided. He referred to the internal road system with regard to safe access. Addressing compatibility, Mr. Perrine noted that the development plan calls for single-family detached homes along Homecrest Road, where the confronting uses are senior housing and three single-family homes. Along Bel Pre Road, the confronting uses are garden apartments and townhouses, and the development plan calls for townhouses and buildings with the appearance of large, single-family homes. Mr. Perrine acknowledged the concern raised by the adjoining Moose Lodge about the proximity of homes to the eastern property line. He suggested that this concern could be addressed during site plan review through fencing and plantings, and that there is some room to move the duplex units a bit farther from the property line if necessary.

Mr. Perrine reviewed the proposed project's compliance with the development standards for the PD Zone. He opined that the project would qualify as recommended for PD in the master plan and so uniquely situated that an assembly of enough land for 50 units is unlikely or undesirable. The Master Plan specifically recommended assemblies of at least 10 acres, which would allow for 20 units at a PD-2 density of two units per acre. Because the applicant was not able to buy property from the Moose Lodge, the limitations of the property allow for only 39 units. Mr. Perrine also noted that the proposed development satisfies the requirements regarding percentage of single-family detached homes and townhouses, and does not include any commercial uses. He observed that it satisfies the compatibility requirement for non-residential uses because the only such use – the Vedanta Center – has considerably more than the required

100-foot distance from any property recommended in the Master Plan for a single-family detached zone. Moreover, the Development Plan shows no building other than single-family detached homes within 100 feet of any property recommended in the Master Plan for a single-family detached zone, and the proposal satisfies the stipulation that no building can be taller than its setback from such property. Mr. Perrine noted that the Development Plan provides for 46 percent green area, which is more than the required 30 percent,¹⁴ and includes a small dedication for Homecrest Road, as well as the dedications necessary for the internal roads.

With regard to internal compatibility, Mr. Perrine acknowledged that the Development Plan depicts three housing areas, separated by distance and tree stands, but noted that they are interconnected by the internal road system and pedestrian sidewalks.

Finally, Mr. Perrine opined that the present application supports positive findings under Section 59-D-1.61(a), which specifies the findings necessary to approve a development plan. Tr. at 70-71. The first two address the Master Plan and development standards for the zone, which were Mr. Perrine had already discussed. He opined that the proposed development would provide a maximum of safety, convenience and amenity for residents due to the internal roads, sidewalks accessing the recreation area and bus stops. He noted the compatibility with surrounding uses, as discussed earlier. He further opined that the development would have a good street system with separate sidewalks, and a separate loading area for the Vedanta Center. Mr. Perrine noted that the proposed development would minimize grading and preserve natural features by keeping the layout as compact as possible, using a retaining wall to preserve trees in the southeast corner of the site, and making no changes to the stream buffer area. He noted that shared storm water management facilities would make efficient use of that system. Mr. Perrine opined that the proposed development would be in the public interest because it would allow an existing religious facility to expand on site in a fashion that is compatible with the existing and new community, would provide for a variety of housing types, and would implement the desired road system for the area.

¹⁴ This was later made subject to change.

Mr. Perrine testified additionally under extensive cross-examination by a community member, Richard Kauffunger. Mr. Kauffunger participated on behalf of himself and the Layhill Citizens Alliance.

Under cross-examination, Mr. Perrine stated the Aspenwood senior living community directly west of the subject site, across Homecrest Road, is set back from the road. He noted that the property slopes broadly from Homecrest towards Bel Pre Road. As a driver enters the site, first there are parking lots, then a building that is two stories on the east side and three on the backside. From Homecrest Road, the view is of parking, with a building in the background that has the appearance of two stories. Mr. Perrine scaled the building setback on that property as approximately 200 feet.

Mr. Perrine acknowledged that the Master Plan recommends a 70-foot right-of-way for Homecrest Road, noting that the proposed development provides for a small dedication to provide 35 feet from the Applicant's property line to the center line of the road. He was not able to state the present paved width of Homecrest Road, and stated that whether additional paving would be required in connection with the dedication would be determined during subdivision review. He emphasized that if the subject application is approved, the Planning Board and the DPWT will require improvements to the road sufficient to ensure safe travel.

Mr. Perrine explained that his rationale in describing the "surrounding area" for purposes of this application was to include the uses that immediately abut and confront the property, which would be most affected by the proposed development. He noted that the relevant surrounding area is larger where the proposed development has a greater scale, such as a ten-story apartment building.

Addressing pedestrian circulation, Mr. Perrine acknowledged that to move between the Vedanta Center and the homes along Homecrest Road, pedestrians would have to use the "friendly connection" between the two, which would be more than a sidewalk but not a regular road.

With regard to his earlier statement that the access points would be adequate and safe, Mr. Perrine conceded that he relied on other experts to reach that conclusion.

In defense of a statement in his written report that the development would conform with the master plan by providing “natural and built recreation areas,” Mr. Perrine explained that it referred to “natural areas” and “built recreation areas,” not “natural recreation areas.” Tr. at 83. He noted that the stream buffer area (the on-site “natural area”) would abut the recreation area, which would abut a sidewalk. This would allow pedestrians to look into the stream buffer area, and possible to walk through it individually, but no paths would be made in or adjacent to the buffer until the extension of the northern road, which presumably would have a sidewalk. [Applicant’s counsel interjected that the Applicant proposed to build a trail through the stream buffer, but Technical Staff rejected that idea. The Development Plan submitted after the hearing shows a trail along part of the stream buffer.]

Mr. Kauffinger asked Mr. Perrine why the MPDUs were “stuck off in the corner,” when the purpose clause for the zone calls for facilitating and encouraging a maximum of social and community interaction. Tr. at 85. Mr. Perrine replied that because they would be provided in the form of townhouses, the MPDUs have different access requirements from the single-family detached homes. Putting them together in two groups allowed the driveways to be grouped together, accessed off of a separate road, which worked well for the plan. Mr. Perrine noted that in such a small community, the MPDUs would not more be stuck off to the side any more than the other two units on the west side, and all would be within about a 30-second walk of the recreation area.

In discussing the compatibility of the proposed development with the neighboring Moose Lodge, Mr. Perrine acknowledged that the duplexes in the southeast corner of the plan were shown about 35 feet from the closest part of the Moose Lodge building. Tr. at 88. He agreed that there is a driveway on the Moose Lodge property, between the building and the property line it shares with the subject site, but he was under the impression that the main driveway is on the other

side of the building. Mr. Kauffinger maintained that the driveway near the subject site is, in fact, the main drive, although there is an exit drive on the other side. Tr. at 89.

Mr. Perrine was also cross-examined by Linda Andrews Nishioka and her father, Laurence Andrews, who lives across Homecrest Road from the subject site. In response to questioning about the use of the “friendly connection” between the western part of the site and the Vedanta Center parking lot by cars, Mr. Perrine stated that such use was unlikely, but if it became a problem, bumps or an exit gate could be installed to discourage use for anything other than emergency vehicles. He acknowledged that such measures would require approval from the Fire and Rescue Services.

Under further cross-examination, Mr. Perrine noted that the homes proposed along Homecrest Road would be set back about 40 feet from the proposed right-of-way line. He observed that earlier versions of the development plan depicted fewer homes along Homecrest Road, with more space between them and driveways connecting directly to the street. Technical Staff rejected that design as not consistent with the PD Zone. Moreover, the site is also constrained by the large stream valley buffer. Technical Staff directed the Applicant to remove homes that were originally shown along the proposed northern road, which would have extended across the entire property. Staff found that those homes would not be part of the small community, and that vehicles driving down the northern road would then see houses, rather than having a view of the open space.

2. Stuart Elkman, Vedanta Center Minister and Applicant. Tr. at 75-76; 162-170.

Mr. Elkman described the activities conducted by the Vedanta Center, and its history on the site. He noted that when the Center bought the subject property, it contained only the small house still on the property. They completed the first phase of their expansion plan, which was the construction of the L-shaped building, and included a second phase on their building permit application. Mr. Elkman stated that currently, the small house is used as a guest house, where people occasionally come for a retreat for a few days. The house accommodates five comfortably, with a maximum of seven. It is used as a women's guest house, or for a family. The L-shaped

building contains a residential wing whose current residents are two monks (including Mr. Elkman). Male visitors stay in the residential wing of the main building, which can accommodate eight residents. Mr. Elkman noted that some members stay in the residential wing of the main building every weekend.

Regarding the purpose of the proposed expansion, Mr. Elkman noted that the current 100-seat auditorium is often full, and after a meeting they would like to be able to serve snacks, but people have to crowd into the living room and dining room of the residential area. With the proposed expansion, they plan to use the present auditorium as a multi-function room – library, conference room, classroom, place for people to congregate – and they'll have the new building with a basement where they can serve food.

3. Wes Guckert, transportation planner. Tr. at 115-136.

Mr. Guckert was designated an expert in transportation planning and traffic engineering. He summarized the results of his traffic study in this case, concluding that based on existing traffic, approved but un-built developments ("background" traffic) and traffic expected from the proposed development, the nearby intersections would continue to operate with critical lane volumes ("CLVs") below the level that County standards consider acceptable in the policy area.

Mr. Guckert noted that the site plan had changed since the completion of this traffic study, reducing the number of driveways along Homecrest Road to two. He reviewed corresponding changes in the trip volumes at each driveway, noting that they do not affect his conclusions about traffic impacts.

Mr. Guckert was quite dismissive of SHA's suggestion, submitted shortly before the hearing, that the traffic study for this case should consider not only the closest signalized intersection to the site in each direction, as required under LATR standards, but also larger intersections some distance away. Mr. Guckert described this as SHA ignoring the LATR standards Montgomery County has adopted, and telling MNCPPC Technical Staff how to carry out traffic

analysis. He stressed that the proposed development would not have access to any state-maintained roadways, and that SHA's comments were inappropriate.

Mr. Guckert described Homecrest and Bel Pre Roads, and reviewed sight distance measurements for each of the proposed access points, which he concluded meet or exceed county standards. He noted that a utility pole located near the proposed entrance on Bel Pre Road might have to be moved north, into the site, by about five feet to ensure unobstructed sight distance.

Under cross-examination by Mr. Kauffunger, Mr. Guckert noted that his team assumed a 45-MPH speed in evaluating sight distances on Bel Pre Road, but did not perform a speed study to determine how fast cars tend to travel. He acknowledged that information about typical travel speeds would be appropriate to use in evaluating sight distances, but stated that it would be atypical in a case like this to do a speed study.

Mr. Guckert acknowledged that the traffic study for this case was done during mid-October, and that sight distances were assessed at that time, not during the summer months. He agreed that the vegetation near the Bel Pre Road entrance would have to be cut back, noting that the Applicant controls the property on either side of the entrance, so there would be no impediment to creating the necessary sight distance.

In response to a question from the Hearing Examiner, Mr. Guckert noted that the required sight distance goes up by 50 feet for each additional 5 MPH until you reach 40 MPH, then it starts to increase at a rate of 75 feet for every 5 MPH.

Under cross-examination by Ms. Nishioka, Mr. Guckert explained how sight distances are measured. He agreed that sight distances might be different for motorcycles, whose drivers are almost in a standing position when stopped, and that not every sports car driver will sit at the average height. Those are, however, the standards used in Montgomery County and elsewhere. Mr. Nishioka stated that Homecrest Road has become a cut-through street for traffic heading to Washington, D.C. from the Baltimore area, and that cars tend to speed, making it hard to see them because of a steep hill. She is concerned that drivers exiting the subject site at Road C,

near the northern property line, would not be able to see cars in time to stop. Mr. Guckert acknowledged that the hill on Homecrest Road limits how far drivers can see, but reiterated that the sight distance meets the minimum standards. He added "I'm not sure why the County picked that location in the master plan." Tr. at 133.

When asked to explain why he measured the sight distance on Homecrest Road at 255 feet and Mr. Kauffunger measured it at 248 feet, using the same methodology, Mr. Guckert stated that the difference between the two is not very significant. He said maybe Mr. Kauffunger had stood 6 and a half feet back from the curb instead of six feet, and that these measurements are not done "with the absolute precision as you would if you were determining a survey line." Tr. at 222. What he considered more significant than a difference of a few feet is the fact that the road is posted with a speed limit of 25 mph, indicating that the government believes motorists should be driving that speed. Mr. Guckert opined that the speed limit was set at 25 mph because of the hill, to get cars to travel more slowly. At 25 or 30 mph, the required sight distance is only 150 to 200 feet. Mr. Guckert suggested that perhaps Homecrest Road would benefit from some traffic calming measures, and that the Applicant would be glad to take such steps, if the County will allow it.

Finally, Mr. Guckert agreed that formal certification of sight distances takes place at a much later stage of development, based on the actual road profile, and that it is premature to deal with that issues at this stage in a development. He noted that if the project proceeds, "it could be that by the time we get there DPW&T says don't build the road; we don't care what the master plan says, don't build the road. And that would be fine with us. We can go out another way." Tr. at 224.

4. John Clapsaddle, civil engineer. Tr. at 137-152.

Mr. Clapsaddle was designated an expert in civil engineering. His firm prepared the storm water management concept plan and the forest conservation plan for the proposed development. Mr. Clapsaddle described the proposed storm water management facilities, which would contain several different elements: surface sand filters, bio-retention devices, an underground filtering system and a pond for water quantity control. These facilities would collect

and filter all of the run-off from the entire site. An earlier version of the storm water management concept that corresponded with a previous development plan was approved by DPS; the present version was under review by DPS at the time of the hearing. Mr. Clapsaddle noted that the major components of the storm water management concept plan remain the same, but some adjustments were made due to changes in the site layout.

DPS's letter approving the original storm water management concept plan stated that six of the proposed lots, Lots 1 through 6, are too small to dry wells, so the Applicant would have to find another approach or seek a waiver of quality control for those units. When asked about this, Mr. Clapsaddle confirmed that those are the MPDU units, and stated that a waiver would not necessarily be needed. He stated that the dry wells were intended to provide an opportunity for groundwater recharge, and suggested that such an opportunity could be created by conveying run-off through grass swales running along the rear of those units, then into the storm drain system, from which it would discharge into another grass swale. He also suggested that additional filtering devices could be added on-site to address this issue, and concluded that a waiver would not be necessary.

With regard to forest conservation, Mr. Clapsaddle testified that the proposed development would preserve the forested areas within the 125-foot stream buffer area, as well as a small forested area between the Vedanta Center and the proposed duplex units. The stream buffer and the additional forested area would be subject to a Category I conservation easement. Mr. Clapsaddle added that new tree plantings are proposed in areas where existing trees would be cleared for grading or the installation of utilities.

5. James O'Brien, architect. Tr. at 152 – 162.

Mr. O'Brien was designated an expert in architecture. His firm is responsible for designing the proposed expansion of the Vedanta Center. He described the proposed new building as about 6,000 square feet, with a stone base, stucco veneer, dome elements and cornice elements. He stated that the design is intended to be reminiscent of the spiritual home of the Rama

Krishna Mission, called Belurmath. Mr. O'Brien opined that the proposed building would contribute to the visual character of the area, noting that it would be unique and a "visual accent."

Mr. O'Brien explained that the expansion would be attached to the existing building, but there would be a firewall between the two, so the new one would be considered a separate building. The existing building is an L shape, with about 4,300 square feet of space, all of which is to be preserved. The new building would be attached to one of the rear walls of the existing building and would face east. Looking from Bel Pre Road, one would have an oblique view of the new building behind the existing structure.

6. Jeff Kirby, Applicant. Tr. at 170-178, 247-252.

Mr. Kirby testified that his company has a contract to purchase portions of the subject property from the Vedanta Center. He described the evolution of this project, which started as a senior housing rental project mixed with other residential uses. Based on community opposition to the density of additional senior housing, in an area that already has a number of similar special exception uses, they decided to remove the senior housing to obtain community support.

Mr. Kirby stated that his company plans to use fencing and landscaping along both Homecrest and Bel Pre Roads to provide a uniform visual buffer, separating the backyards from the roads. That buffer area would be maintained by the Homeowner's Association for the development. Tr. at 172-73.

Mr. Kirby also testified regarding his contacts with Mr. Kauffunger during the development of this project. He stated that Mr. Kauffunger was invited to every meeting with the Layhill Alliance and Technical Staff, but Mr. Kauffunger did not care to be in any meetings with members of the Layhill Alliance. Mr. Kirby stated that he "chose to go with the group that represented thousands of people" versus Mr. Kauffunger's much smaller organization. Mr. Kirby acknowledged that Mr. Kauffunger did attend two meetings with Technical Staff and the Applicant,

but he and his counsel noted that Mr. Kirby performed an enormous amount of community outreach – some 200 contacts with the Bel Pre Estates Homeowner's Association and the Layhill Alliance.

B. Applicant's Rebuttal

1. Phil Perrine. Tr. at 253-58.

Mr. Perrine testified on rebuttal that the Master Plan was written before construction of the Vedanta Center, which the proposed development has had to accommodate. He also noted that if the proposed Road C, along the northern boundary, were eventually connected to Big Bear Terrace, traffic from that area could use the new road to reach Homecrest Road, and from there to access Bel Pre Road at a signalized intersection, instead of using the unsignalized intersection between Big Bear Court and Bel Pre Road. He suggested that option would be particularly useful for those who need to turn left onto Bel Pre Road.

Mr. Perrine testified that Road C is shown on the Development Plan as a tertiary road because that was Technical Staff's preference. He stated that usually a tertiary road is considered appropriate for up to about 75 dwelling units, which is about the amount of development that would use the road if the area were fully redeveloped. He acknowledged that a wider right-of-way might be needed if the road provided access to the Racquet Club, but only within the first 200 hundred feet or so of Homecrest Road. Moreover, the Development Plan leaves room to make Road C a secondary Road if the Planning Board so chooses during preliminary plan review.

Regarding the evolution of the Development Plan, Mr. Perrine noted that the changes Technical Staff required were not trivial suggestions, they were the result of continuous workshops and meetings about doing more to develop a sense of community. Mr. Perrine opined that Staff came up with the right solution here, with the homes on Homecrest Road facing each other across an internal road. He stated that while there may be 10 or 11 homes versus seven, they are more organized. Moreover, with the earlier plan for seven homes with individual driveways, the line of sight would still have been partially blocked, and the view would

have included all those driveways. With the current plan, that view would be of uniform, architecturally coordinated fencing and landscaping.

Mr. Perrine stated that it would not be practical to try and integrate the MPDUs more because of the small scale of this development. He also stated that the duplexes shown in the southwest corner of the site would not necessarily have any greater connection to the rest of the community if they were adjacent to Road B, below the Vedanta Center, than if they are connected by a pathway. He suggested that the pathway would give them a better connection to the north end of the community than if they were at the end of Road B.

2. Stuart Elkman. Tr. at 260-61.

Mr. Elkman testified that the members of the Vedanta Center would object “on several levels” to having their property, which they believe has a sacred feeling, used for housing right in front of the Center. The members have associated the open area with the Center, and would feel it inappropriate to change that. Moreover, with homes right in front of the Vedanta Center, the Center complex would not be immediately visible for people entering the site. Mr. Elkman also suggested that the people living in the duplex units, which are to be owned by the Vedanta Center, would probably prefer to be a bit off to the side, without feeling like they are living in an Ashram right in the middle of the Center. He noted that the Vedanta Center hopes to sell the duplex units with some type of contractual restraints so they remain within the Vedanta Center community.

3. Wes Guckert. Tr. at 262.

Mr. Guckert testified on rebuttal that full extension of the northern access road is not necessary to satisfy APFO for this project, or to provide access to the proposed development.

C. Community Participation

1. Joe Podson, Tr. at 16-21.

Mr. Podson is the manager of Homecrest House, a home for 280 low income seniors and disabled persons that is located on the other side of Homecrest Road from the subject property, slightly to the north, across from the Aspen Hill Racquet Club. He noted that some residents are at Homecrest House for as much as 15 to 20 years, and many work, volunteer, drive and consider themselves part of the neighborhood. Mr. Podson stated that the residents and Board of Homecrest House are not opposed to the proposed development, but are concerned about the beauty and safety of the area. Mr. Podson finds that on the current Development Plan, the homes on Homecrest Road are very close together, and would give the appearance of townhouses to a person driving by. He noted that on earlier versions of the Development Plan, the buildings were larger and more spread out, with more grassy area and a more attractive appearance.

Mr. Podson also suggested that if the road proposed along the northern end of the property were extended to the storm water management pond, it could create a hang-out area for kids, leading to potential safety problems. An early version also showed homes along that road, near the storm water management pond, which could serve as a deterrent to kids hanging out there if the road is ever extended that far.

2. Ricky Lopes, Tr. at 21-26.

Mr. Lopes, president of the Bel Pre Estates Homeowners Association, spoke in support of the application. He first identified the location of Bel Pre Estates, which is a collection of single-family homes located a few blocks east of the subject site along Bel Pre Road, across from Rippling Brook Road. Mr. Lopes noted that it would improve road access for his development if the road proposed for the north end of the subject property were extended through to a stub road called Big Bear Terrace, which enters Bel Pre Estates. He hopes that will not happen, however, unless and until additional homes are built along the path of the road, to prevent it from becoming a lover's lane or hang-out spot.

Mr. Lopes stated that the Applicant's original plan was unacceptable to his organization, but the significant changes made to the plan have brought it "into general alignment with the master plan of Aspen Hill and with the community's concerns and needs." Tr. at 22. He described the Applicant as very responsive to concerns expressed by the community, noting several positive elements of the application such as placing the homes along an interior road to create a sense of community; locating the road into the development far enough from the intersection of Bel Pre and Homecrest Roads to be safe; and placing MPDUs in two buildings, with three units each, that will look like the other homes in the neighborhood. He did note that he hopes the development will have landscaping and screening, to give it visual appeal both for people driving by and for its residents.

3. Wayne Courtney, Tr. at 27-33.

Mr. Courtney spoke on behalf of the Wheaton Moose Lodge, owner of the property adjacent to the subject site to the east. He described Moose International as a civic organization with 2,300 lodges worldwide.

Mr. Courtney noted that the Wheaton Moose Lodge is the "adjacent property" referred to in the Staff Report, which states that the Applicant advised staff that it was not possible to negotiate with the adjacent property owner to include that property in the proposed development. He noted that the only contact the Lodge has had with the Applicants was in November 2002, when they asked to purchase the back two and a half acres of the Moose Lodge property. The Moose Lodge declined to sell any of its property and since then has not heard from the Applicant or received any documentation about the project. Mr. Courtney emphasized that the Moose Lodge has no plans to sell its property, and it intends to be at that location "for quite a while."

Mr. Courtney expressed a concern about the proximity of the duplex units planned for the southeastern corner of the subject property, which would be less than 50 feet from the Moose Lodge property. He noted that as a social organization, the Moose Lodge has dances and other social activities with live bands, and that houses that close will be disturbed by the Moose

Lodge activities. He also noted that they have outside activities on the back portion of their property, sometimes with a band or a disc jockey.

Mr. Courtney stated that the Moose Lodge would be adversely affected by a development with homes so close to its property, because the proximity of those homes would make the Moose Lodge property less saleable in the future. As a result, Mr. Courtney believes the development as presently proposed would not be compatible with the use of the Moose Lodge property.

4. Laurence Andrews, Tr. at 97-98.

Mr. Andrews has resided across the street from the subject property for over 50 years, and stated that his family plans to stay there for the rest of their lives. Mr. Andrews considers the development proposed on the western part of the site to be far too dense, with not enough green space between the houses. He stated that the appearance would be one long row house, which would be out of place. He suggested that the more open plan that was submitted earlier to Park & Planning be reconsidered.

5. Linda Nishioka, Tr. at 179-187.

Ms. Nishioka grew up in a house across Homcrest Road from the northwest portion of the subject property, where her father, Laurence Andrews, still resides. She testified that her father bought his property in 1951, after extensive research indicated that the property was in one of the areas the Park & Planning Department called a "green wedge" that would be preserved for individual homes with land around them. She described the changes in the neighborhood since she was a young girl, when there was no traffic in the area and the subject property was used to raise pansies and daffodils. She noted that when Leisure World was approved, the community was told that it would never use Homcrest Road, which would be blocked off as a farmer's lane. In contrast, Ms. Nishioka stated, people now speed down Homcrest Road at 50 mph, including school buses, public buses, delivery trucks, people coming through, and people cutting through to

avoid traffic lights in Sandy Spring. Based on this experience, Ms. Nishioka distrusts oral promises from developers.

Ms. Nishioka stated that her family is concerned about the view they will have if this development is approved. With the houses close together, her father's home will face five townhouses, essentially giving him a view of a 34-foot wall instead of the woods he now sees. She voiced a concern that without the current open field for sound waves to go across, the road noise will be worse. Pointing out that the Vedanta Center would take up a lot of space, she suggested that squeezing almost all the homes into the western part of the site creates too high a density. Ms. Nishioka preferred an earlier plan, which showed more space between the houses on Homecrest. She thinks that instead of changing it so dramatically, they could have made minor adjustments to include an internal roadway without making it so crowded.

Ms. Nishioka also addressed pedestrian accessibility. She noted that an illustrative development plan, Exhibit 40, shows a landscaped strip between the sidewalk and the road on Homecrest Road, but on Bel Pre Road, the sidewalk would be directly abutting the roadway. She suggested that "now is the opportunity to improve this narrow little sidewalk which is right up against the road to encourage people to walk, especially since we have an elderly population here" in the two senior living facilities on Homecrest Road. Tr. at 186. Ms. Nishioka stated that a lot of the elderly residents walk to the nearby Plaza del Mercado, and it would improve their safety and quality of life to put in a green strip between the pavement, with its trucks and buses, and the sidewalk.

6. Richard Kauffunger, Tr. at 188-251.

Mr. Kauffunger described himself as "a long-time activist in land use affairs and traffic issues and educational issues in the Greater Layhill area." Tr. at 188. He spoke on behalf of himself and the Layhill Citizens' Alliance, which is "a fairly new civic group of individuals who were highly involved in civic affairs and a number of them are people who are not represented by local civic or homeowner associations." *Id.* Mr. Kauffunger explained that the Layhill Citizens' Alliance

was formed in 2005, with about 15 individual members from the greater Layhill area. It is distinct from the "Layhill Alliance," an alliance of a number of civic associations of which Mr. Kauffunger was a founder and longstanding member. Mr. Kauffunger stated that his individual civic association decided a number of years ago not to participate in the Layhill Alliance. The Layhill Alliance later changed its by-laws to exclude from membership anyone whose individual civic association is not a member of the Alliance. Accordingly, Mr. Kauffunger is no longer a member. [Note: Applicant's counsel indicated that the Layhill Alliance testified in support of the project before the Planning Board.]

Mr. Kauffunger served on the Citizens' Advisory Committee for the Aspen Hill Master Plan, which met monthly for four years, and as a result is very familiar with the Master Plan. His concerns about the Master Plan are set forth in detail in Part III.F. above.

In particular, he noted that the Master Plan recognized that the key to getting an internal roadway was redevelopment of property at densities higher than RE-2. Mr. Kauffunger stated that this goal is repeated several times in the Master Plan, and spurred several of its recommendations. For example, he stated that the recommended zoning was kept at RE-2 as leverage, to get each developer to cooperate with the concept of a road network that wouldn't bring cars out onto Bel Pre Road. This was also the reason for recommending PD-2 zoning for parcels of at least ten acres, to leverage development on the north side of Bel Pre Road to get an internal road network.

Mr. Kauffunger highlighted a Master Plan drawing showing how the stream buffer and other environmentally valuable areas affect the western end of the Bel Pre area. He noted that the Argyle Country Club area is split in two by Bel Pre Creek, inhibiting access from the east off of Layhill Road. An entrance at the north end of the subject property, leading south of the stream buffer as well as north, would provide access into the country club area if it were developed. The Master Plan also calls for an access point onto Homecrest Road, to allow traffic to enter Bel Pre Road safely at a signalized intersection. Mr. Kauffunger noted that the importance of this point was

reflected in the testimony of Mr. Lopes, who described how difficult it is to exit his community, which currently has its sole access onto Bel Pre Road. To illustrate the safety concerns on Bel Pre Road, Mr. Kauffunger stated that the property underlying Mr. Lopes' community was twice the subject of unsuccessful rezoning applications, and in both cases the applications were defeated because of inadequate sight distance. Tr. at 202-203.

Mr. Kauffunger noted that the Master Plan recommends a right-of-way of 70 feet for Homecrest Road, with a recommended paving width of 36 feet. He emphasized that with only 20 feet of pavement today, Homecrest Road is substandard, complicating the dangers of high-speed traffic. Mr. Kauffunger observed that Bel Pre Road is also substandard, with a width of only 54 feet for five lanes of traffic.

Turning to the purpose clause for the PD Zone, Mr. Kauffunger argued that the proposed development fails to satisfy several elements: to facilitate and encourage a maximum of social and community interaction and activity; to encourage and provide for open space conveniently located so as to function for the general benefit of the community and the public at large; and to encourage and provide for a comprehensive pedestrian circulation network separated from vehicular roadways, linking residential areas, open spaces and recreational areas. Mr. Kauffunger argued that the MPDUs and duplexes are not integrated into the community; that the stream buffer, which is the main open space area on the Development Plan, would not be accessible to the community, given that there is no parking along the closest street and there aren't any walking paths; and that the sidewalks are not really designed to link to residential areas with the open space. Tr. at 206-207.

Mr. Kauffunger referred to an earlier version of the Development Plan, which showed some houses in the northwest corner of the site, along the northern road (Road C). He stated that everyone agreed there should be an internal road between the houses on Homecrest Road, but then one member of Technical Staff insisted that the houses in the northwest corner of the site be removed for environmental reasons. Those units were moved to Homecrest Road, which resulted

in the denser configuration on the current Development Plan. As a result, the residents across Homecrest Road from the site would look at eleven homes, rather than seven, with very little space between them.

Turning to traffic safety, Mr. Kauffunger testified that he had performed his own light-of-sight measurements. This testimony is described in detail in Part III.H. above.

Mr. Kauffunger completed his testimony by offering into evidence his proposal for how to improve the proposed Development Plan. Tr. at 232. He suggested the density along Homecrest Road could be reduced by removing four houses from that area and putting them back up in the northwest corner of the property. This would lay the foundation for extending the sense of community if the rear part of the Moose Lodge property is developed for housing one day. Mr. Kauffunger suggested that the duplexes in the southeast corner of the Development Plan should be linked to the rest of the community by moving them directly south of the Vedanta Center and putting the parking for the Vedanta Center in the southeast corner of the property, instead. He suggested this could provide a grand entrance for the Vedanta Center, rather than having people walk past the small house on the site and the current building before getting to the new building. It would also move the duplex units away from the Moose Lodge property. Mr. Kauffunger also advocated dispersing MPDUs throughout the development, rather than clustering them in one location. He noted that they could still be in the form of townhouses, but they could be integrated into the community instead of being off in a corner.

Mr. Kauffunger suggested that a walking path around the stream valley buffer would be a real amenity for the whole community. Regarding the proposed road along the northern property line, Mr. Kauffunger suggested getting around the potential sight distance problem by putting the entrance partly on the property of the adjacent Racquet Club, which is past the bump in the road that creates the sight distance issue. He suggested that could remove the safety problem while still implementing the Master Plan, plus it would avoid having two roads less than 100 feet apart.

Mr. Kauffunger described it as a dream for residents of this area that development of the subject property could break the institutional look that was created by all the nearby special exceptions and benefit the whole community. With eleven houses on Homecrest Road, however, he feels that will not happen.

Under cross-examination by Applicant's counsel, Mr. Kauffunger acknowledged that he signed an agreement with Mr. Kirby, representative of the Applicant, in which Mr. Kauffunger agreed to support reclassification to the PD-2 Zone of 16 acres, to be developed with 38 new homes plus the existing home on the Vedanta Center property. Tr. at 242. The letter specified a unit mix of 20 single-family detached homes, 12 duplex units and six MPDU townhouses. See Ex. 54. It provided Mr. Kauffunger's agreement that he would support the proposed rezoning through written and oral testimony at the required hearings, contingent on withdrawal of zoning case G-836 the day the letter was signed (this, obviously, did not happen). Applicant's counsel pointed out that the words "Layhill Citizens' Alliance" below his name were crossed out. Mr. Kauffunger explained that he was going out of town on the day that agreement was signed, and at that point he could only speak for himself. His group was adamantly opposed to the original application for PD-7 zoning, and to the subsequent proposal for PD-4 zoning. Mr. Kirby asked Mr. Kauffunger that day whether he would support PD-2 zoning and he said he would, because that is what the Master Plan recommended. But as it turned out, Mr. Kauffunger and others did not like the plan they came up with, so he had some comments to make. Mr. Kauffunger stated that he is not opposed to the rezoning, because he supports the density, he just thinks the plan could be improved.

7. Max Bronstein, Tr. at 193-94.

Mr. Bronstein pointed out, following a discussion of the Layhill Citizens' Alliance v. the Layhill Alliance, that Mr. Lopes represents Bel Pre Estates, a community of only 18 homes. Mr. Bronstein lives in a community of 800 homes. (He provided more substantive comments in writing, which are summarized in Part III.J. above.

V. ZONING ISSUES

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term “Euclidean” zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks, and building height. In the State of Maryland, a property owner seeking to reclassify his or her property from one Euclidean zone to another bears a heavy burden to prove either a change in circumstances or a mistake in the original zoning. See *Stratakis v. Beauchamp*, 268 Md. 643, 652-53 (1973).

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, *i.e.*, it satisfies the purpose clause and requirements for the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific specifications, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings. These specifications are set forth on a development plan to facilitate appropriate zoning oversight by the District Council. Pursuant to Code §59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. Once it is approved, the development plan provides the design specifications for the site, much as the Zoning Ordinance provides design specifications for

more rigidly applied zones. Accordingly, the evaluation of zoning issues must begin with the development plan and proceed to the requirements of the zone itself.

A. The Development Plan

Before approving a development plan, the District Council must make five specific findings set forth in Code § 59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas. The required findings are set forth below in the order in which they appear in the Zoning Code, together with the grounds for the Hearing Examiner's conclusion that the evidence in this case does not support the required findings.

- (a) ***That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.***

The first sentence of the purpose clause for the PD Zone establishes consistency with the master plan as an important factor in applying the zone:

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional district and the area master plans by permitting unified development consistent with densities proposed by master plans.

The density category indicated on the applicable master plan has special status in a PD Zone. If the District Council desires to grant reclassification to a PD Zone with a density category *higher* than that indicated on the applicable master plan, such action requires the affirmative vote of at least six members of the District Council. Code §59-D-1.62. In this case, the Applicants seek the density category recommended in the Master Plan, so a supermajority vote is not necessary.

In the present case, both the Planning Board and Technical Staff found that the proposed development conforms to the recommendations of the *1994 Approved and Adopted*

Aspen Hill Master Plan. The Applicants' land planner also reached the same conclusion. When the Planning Board and its Technical Staff reviewed the Development Plan, however, the plan did not contain the current textual binding element stating that the project will have "no more than two" access points on Homecrest Road. This leaves open the possibility that one of the two access points on Homecrest Road might be eliminated – including Road C, which is an important element of the Master Plan objectives for the Bel Pre Road Area. The record provides no indication that the Planning Board or Technical Staff were aware of a possibility that Road C might not be built. Mr. Guckert's opinion that the development could easily be built without Road C, if DPWT were to find the proposed access point dangerous, was offered in testimony, not in his written report. Any testimony he may have given before the Planning Board is not part of this record. The lack of full information undercuts, to some degree, the weight normally given to Planning Board and Technical Plan recommendations on Master Plan issues.

The Development Plan is in compliance with many of the Master Plan's goals, including its broad goals related to housing, the environment, and community identity and design. The three unit types proposed offer a choice of housing types for people of varying incomes and lifestyles, including the unusual choice of housing intended for members of a particular religious organization. The most significant natural resources on the site would be fully preserved within the stream valley, and some of the significant trees outside the stream valley might be preserved, as well. The Master Plan's goal with regard to community identity and design is to "[p]rovide for attractive land uses that encourage opportunity for social interaction and promote community identity." Master Plan at 22. The Development Plan would serve this goal by creating a well-planned community, with uniform landscaping and fencing along Homecrest Road, an architecturally interesting worship building serving as a "visual accent", and a network of sidewalks and paths connecting the various residential areas with

each other, the worship center, the recreation area, the partial stream valley trail and neighboring sidewalks.

The site layout would better meet the Master Plan's goal of increasing community interaction and reducing the social and physical isolation of portions of the community if the MPDUs were distributed in more than one location on the site, rather than clumped together in a corner, with a separate (and narrower) access road. However, even with this flaw, the Hearing Examiner finds that the Development Plan *substantially* complies with the Master Plan's community identity goals.

The Development Plan also complies with the specific recommendations made for the Western Bel Pre Road Area: PD-2 zoning for consolidations of ten acres or more; protection of Bel Pre Creek and the stream buffer areas; and consolidated, on-site storm water management.

The only unresolved question concerning Master Plan compliance is the roadway along the northern boundary line, which is central to the Master Plan's vision for the development of the subject property and nearby parcels. The Master Plan calls for a network of internal roadways to reduce the need for curb cuts on Bel Pre Road, reduce the environmental impacts of development on Bel Pre Creek, and provide a way for new development to enter busy Bel Pre Road at a signalized intersection. The Master Plan specifically recommended, both pictorially and in the text, an internal roadway along the northern edge of the subject property, with access from Homecrest Road. The road is specified as a secondary roadway, and the Master Plan suggests consolidating access drives with the adjacent Racquet Club if the proximity of the two entrances is considered a safety hazard. The submitted Development Plan provides for a 50-foot right-of-way dedication in the appropriate location, along the northern boundary of the site. It also states, however, in a textual binding element, that there will be "no more than two" access points on Homecrest Road. This suggests that one of the two access

points shown on the Development Plan may be eliminated. Thus, the fulfillment of one of the Master Plan's key objectives is uncertain.

The Applicants may, understandably, have some unease about whether Road C can safely be built as called for in the Master Plan and as shown on the Development Plan. The evidence indicates that sight distance is marginal because of a bump in the road to the north, and that proximity to the entrance road for the adjacent Racquet Club may cause additional safety concerns. The Applicants' own traffic expert provided clear indications in his testimony that he believes Road C is unnecessary, and that the location proposed in the Master Plan is less than optimal. There are ways, however, for the Applicants to provide a higher degree of certainty that the Master Plan's internal roadway goal can be fulfilled, without sacrificing safety. The Master Plan suggests that the new road begin as a primary roadway, then branch off to the north to provide a new access point to the Racquet Club, while the rest of the road continues as a secondary roadway. The 50-foot right-of-way dedication shown on the Master Plan would not, however, be adequate to provide for a secondary roadway, let alone a primary roadway for some initial distance. The Development Plan was not prepared in a way that allows for a possible increase in the width of the right-of-way dedication for Road C, if needed to achieve the Master Plan's roadway objectives, nor does it specify what access and circulation would look like with only one Homecrest Road entrance.

Based on the preponderance of the evidence, the Hearing Examiner finds that the proposed development would be in substantial compliance with all of the Master Plan's recommendations except those concerning an internal roadway with access from Homecrest Road. The submitted Development Plan is simply too uncertain on this point.

The evidence supports the conclusion that the Development Plan does not conflict with any other county plans or policies, or with the capital improvement program. It would further county housing policy by creating diverse housing options, including affordable housing, and (as discussed in Part III.H. above) would not be inconsistent with the AGP.

- (b) ***That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.***

1. Purposes of the Zone

The purpose clause for the PD Zone, found in Code §59-C-7.11, is set forth in full below, with relevant analysis and conclusions for each paragraph following.

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional District and the area master plans by permitting unified development consistent with densities proposed by master plans. It is intended that this zone provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. In so doing, it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

It is further the purpose of this zone that development be so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development. It is intended that development in this zone produce a balance and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area master plan, and related public and private facilities.

It is furthermore the purpose of this zone to provide and encourage a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types.

Additionally, it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees and, in order to do so, minimize the amount of grading necessary for construction of a development.

It is further the purpose of this zone to encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial concentration so as to function for the general benefit of the community and public at large as places for relaxation, recreation and social activity; and, furthermore, open space should be so

situated as part of the plan and design of each development as to achieve the physical and aesthetic integration of the uses and activities within each development.

It is also the purpose of this zone to encourage and provide for the development of comprehensive, pedestrian circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities, and thereby minimize reliance upon the automobile as a means of transportation.

Since many of the purposes of the zone can best be realized with developments of a large scale in terms of area of land and numbers of dwelling units which offer opportunities for a wider range of related residential and nonresidential uses, it is therefore the purpose of this zone to encourage development on such a scale.

It is further the purpose of this zone to achieve a maximum of safety, convenience and amenity for both the residents of each development and the residents of neighboring areas, and, furthermore, to assure compatibility and coordination of each development with existing and proposed surrounding land uses.

This zone is in the nature of a special exception, and shall be approved or disapproved upon findings that the application is or is not proper for the comprehensive and systematic development of the county, is or is not capable of accomplishing the purposes of this zone and is or is not in substantial compliance with the duly approved and adopted general plan and master plans. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a special set of plans is required for each planned development, and the district council and the planning board are empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.

1st paragraph: Master Plan implementation. As discussed under (a) above, the proposed development would be in substantial compliance with most of the recommendations and objectives of the Master Plan. It would also integrate mutually compatible uses and provide more efficient circulation, access and storm water management than could be achieved under the current conventional zoning, as well as better environmental protection and amenities. The evidence is inconclusive, however, as to whether the proposed development would implement the Master Plan's key internal roadway objectives for this site. Accordingly, this element of the purpose clause is not satisfied.

Second paragraph: social and community interaction, distinctive visual character, balanced mix of uses. As Technical Staff and the Applicants' land planner found, the proposed development would achieve these objectives in several ways. The development would have a distinctive visual character because a worship center would occupy a prominent central location, because much of the site would consist of open stream valley buffer, and because of the unusual architecture proposed for the new Vedanta Center building. A network of pedestrian sidewalks and trails would connect each of the residential areas with each other, the Vedanta Center, the recreation area on Road B, a path along part of the stream buffer, and adjoining public sidewalks, facilitating social and community interaction. Most of the homes would face other homes, further encouraging social interaction and a sense of community. The subject site is in relatively close proximity to shopping, parks and public transportation, and testimony indicated that there is a substantial amount of pedestrian activity, despite marginally adequate sidewalks, providing opportunities for interaction between residents of the proposed development and the surrounding community. In addition, the expansion of the Vedanta Center would enhance opportunities for fellowship and community among its members and visitors, who would be part of the larger community as well.

The unified sense of community that the purpose clause suggests might be attained to a higher degree if the duplex units were adjacent to the single-family homes, rather than separated from them by the Vedanta Center parking lot, as suggested by some community members. On the other hand, the worship center would be less integrated into the development if the location of the duplex units did not require paths that would lead residents to walk the grounds of the Vedanta Center to reach the trail along the stream valley and the community recreation area. Moreover, the Hearing Examiner's review of the Development Plan suggests that the area shown for the Vedanta Center parking lot is significantly smaller than the area shown for the duplex units, making the "switch" suggested during the hearing impractical.

The proposed development does not include commercial uses due to its size, but it does include a mix of residential use types, recreational opportunities and a religious use. Technical Staff indicates that commercial uses would not be appropriate for a development of this size. See Ex. 33.

Based on the preponderance of the evidence, the Hearing Examiner concludes that the development depicted on the proposed Development Plan would satisfy this element of the purpose clause.

Third paragraph: broad range of housing types. The proposed development would provide a broad range of housing types, including two-to-three bedroom MPDUs, three-bedroom duplex units intended for members of the Vedanta Center, and four-bedroom single-family detached homes. These options would attract residents with varying lifestyles and income levels. The development would broaden the mix of housing types in the surrounding area, in which residential uses other than single family detached homes dominate.

Fourth and fifth paragraphs: trees, grading and open space. The proposed development would preserve 4.2 acres of existing forest, mostly in the stream valley, and would involve a small amount of reforestation where trees are removed during construction. Moreover, refinements to the layout during preliminary plan and site plan review might preserve significant and specimen trees. The layout of the Development Plan would minimize grading by preserving the stream valley buffer and existing Vedanta Center buildings, and through efficient layouts making use of the existing topography.

Both residents of the proposed development and visitors to the Vedanta Center would be able to enjoy the visual beauty of the stream valley from the trail, the sidewalks and the recreation area on Road B. The main open space area, the stream valley, is not readily accessible to the general public because it is set back from the roads. Area residents might be able to enjoy the trail along the stream buffer by parking in the Vedanta Center parking lot, which by all accounts is empty much of the time. Mr. Kauffunger states that parking would not be

available on the street next to the recreation area, which is shown with a clear view of the stream valley. However, nothing in the record indicates definitively that this is the case; Road B is shown as a dedicated public roadway with 26 feet of pavement, which probably allows for at least some parking along one side of the street. In addition, the preserved stream valley on the subject property would continue to form part of the larger stream valley that runs through the area and serves as a valuable amenity for all area residents. The Hearing Examiner agrees with Technical Staff that the open space requirement is geared more towards large projects, and that for a development of this size, the open space and access shown is adequate. See Ex. 33.

Sixth paragraph: pedestrian networks. Pedestrian activity would be encouraged by a network of pedestrian sidewalks and trails linking the residential areas with one another, the worship center, the recreation area on Road B, the partial stream valley trail and the nearby public sidewalks. The subject site is located with one block of bus stops on both Bel Pre and Homecrest Roads. The availability of pedestrian sidewalks and paths separate from roads, and the proximity to public transportation, would both reduce reliance on the automobile.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The proposed Development Plan would consolidate three parcels for a total of 16 acres of land. While not large in an absolute sense, the proposed development would aggregate enough parcels to satisfy the Master Plan's specific size recommendation for PD-2 zoning, with enough to space to permit three different unit types and the efficiency of joint storm water management and road connections.

Eighth paragraph, first part: safety, convenience and amenity. The evidence demonstrates that the proposed development would provide safe and convenient roadways, sidewalks and pathways, provided that the necessary steps are taken to assure adequate sight distances for the Bel Pre Road entrance and the access to Road C. On Bel Pre Road, adequate sight distance likely would require cutting back vegetation and moving a utility pole by a few feet. At the access point to Road C, ensuring a safe condition might require redesigning the size and

location of the access point. As discussed earlier, the uncertainty surrounding this element of the project impedes full compliance with the purpose clause for the zone.

Residents of the homes on the west side of the site would have access to Bel Pre Road at a signalized intersection. Residents of the duplex units and visitors to the Vedanta Center would not have that advantage, but their shared access point would improve safety on Bel Pre Road by reducing the number of curb cuts along this stretch of land from three to two. The proposed pathways, partial stream valley trail and recreation area represent amenities that would be available to residents of the development and to any residents of the larger community who care to enter the development to view the stream valley.

Eighth paragraph, second part: compatibility. The Hearing Examiner is not persuaded that the proposed development would be compatible with existing uses in the surrounding area. Some elements of the development would be compatible with their surroundings. The duplex units would be within 60 feet of the Moose Lodge building, but would be buffered by a 60- to 70-foot deep wooded area, which would provide substantial visual and noise screening. Across Bel Pre Road, the duplex units would confront townhouses that are built at a density of five dwelling units per acre, significantly higher than the 2.4 d.u./acre propose for the subject site overall. The townhouses and two single-family detached homes backing onto Bel Pre Road in the southwest corner of the site would confront townhouses built at five d.u./acre and multi-family units at a density of approximately 22 d.u./acre. Moreover, the dwellings across Bel Pre Road are set back a significant distance from the street, so the impact of the new development likely would not be substantial.

The problematic issue in terms of compatibility is the number and size of the units proposed along Homecrest Road. These units are the most visible in the west end of the site, with their long street frontage. They play a key role in the visual impact of the proposed development on the intersection and on Homecrest Road. Across Homecrest Road from the site are three single-family homes. Both sides of the street would have single-family detached

dwelling with the proposed development in place, but there the similarities end. The aerial photograph on page 21 shows the three existing homes on large, wooded lots, with substantial space on all sides of each house. The Development Plan shows ten single-family detached homes backing onto Homecrest Road, each with a maximum height of 40 feet and (scaling it off, an admittedly imprecise exercise at a scale of 50 feet to the inch) between ten and 15 feet between houses. Community members expressed a legitimate concern that these dwellings would have the appearance of a density closer to townhouses than to the typical density of single-family homes in the area. Based, again, on the Hearing Examiner's scale, the new houses would be set back about 45 feet from the sidewalk. Some of this setback would, presumably, be occupied by landscaping and fencing to be maintained by the homeowner's association. Beyond the setback, the new homes would be separated from the existing residential lots by the 20-foot width of Homecrest Road, plus sidewalks. With a street that narrow and the houses so close together, the existing homes could feel hemmed in, with a vista that goes no farther than the uniform line of fences and houses facing them. Moreover, the new development would not have the effect some community members hope for, of breaking up the high density concentrated at this intersection.

The overall density of the proposed development is 2.4 d.u./acre. This is based on the standard PD-2 density of two units per acre, plus a 22 percent density bonus for 15 percent MPDUs (six units out of 39). Breaking that down to examine the visual impact of the homes shown along Homecrest Road, the Hearing Examiner estimates that the principal residential area shown on the Development Plan occupies roughly the western third of the site, an area of about 5.3 acres. Within that acreage, the Development Plan shows 26 units – a density of 4.9 d.u./acre. This represents a nearly tenfold increase in the density permitted under the current RE-2 zoning, which requires a minimum of two acres per lot. It also represents a density considerably higher than the prevailing densities in the single-family portions of the surrounding area, zoned R-150 and R-200, both of which provide for standard densities of 2.2 d.u./acre.

As the Master Plan makes clear, the purpose of recommending PD zoning for the subject property was to provide an incentive for consolidation of lots to provide all the benefits discussed earlier in this report, including efficient road access with fewer curb cuts, joint storm water management and more effective environmental protection. Thus, higher density than the current zoning is expected and appropriate. The question is one of degree. Higher density should be accommodated in a manner that preserves compatibility with the surrounding area. On Homecrest Road, the most directly affected land uses would be the three single-family homes across the street, and the very close placement of homes shown on the Development Plan is not, in the Hearing Examiner's view, compatible with those homes. The closeness of homes on the interior streets is an appropriate way to achieve higher density, as the off-site impacts would be minimal. Along a roadway frontage confronting single-family homes on large lots, however, site design requires more sensitivity to visual compatibility.

The Applicants are apparently frustrated by Technical Staff's refusal to permit units in the northeast corner of the site, a decision that expanded the already substantial environmental constraints on the property. However, the Applicants have the responsibility to work within the site constraints and nonetheless present an application that is compatible with the surrounding area.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

On the Hearing Examiner's reading, this element of the purpose clause does not add new requirements, but reminds the District Council of its responsibility to carefully consider

whether the PD Zone would be appropriate in the location for which it is requested. The conclusions drawn earlier in this section govern the findings to be made here. Based on the preponderance of the evidence and for the reasons stated above, the Hearing Examiner concludes that present application is not proper for the comprehensive and systematic development of the County due to a lack of compatibility; is not in compliance with or capable of accomplishing all of the purposes of the zone; and is not in substantial compliance with the Master Plan.

2. Standards and Regulations of the Zone

The standards and regulations of the PD-15 Zone are summarized below, together with the grounds for the Hearing Examiner's conclusion that the proposed development would satisfy many, but not all of these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is recommended in the Master Plan for PD-2 zoning, provided there is a consolidation of at least ten acres. The subject property represents an assemblage of approximately 16 acres, so this requirement is satisfied.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the last of these criteria, which states the following:

That the Property is recommended for the PD zone in an approved and adopted master or sector plan and so uniquely situated that assembly of a minimum gross area to accommodate at least 50 dwelling units is unlikely or undesirable and the development of less than 50 dwelling units is in the public interest.

The subject property is recommended for the PD zone in the Master Plan. It is not large enough, at 16 acres with a density of two units per acre, to accommodate 50 dwelling units. Applicant J. Kirby Development represented that its efforts to negotiate with the adjacent

Wheaton Moose Lodge for additional land at the rear of the Moose Lodge parcel were unfruitful. Mr. Courtney, representing the Moose Lodge, confirmed this, stating that the Lodge rejected the request for negotiations. The adjacent property to the north is fully developed and used by the Racquet Club, and the other two boundaries of the property abut roadways. If the compatibility problems and other deficiencies noted in this report can be corrected, the evidence indicates that development of the subject property with less than 50 units would be in the public interest. Accordingly, the Hearing Examiner agrees with Technical Staff's conclusion that this requirement is satisfied.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A PD-2 development with less than 50 units must have at least 35 percent single-family detached units and at least 35 percent townhouse or single-family attached units. The proposed Development Plan provides for 54 percent single-family detached units and 46 percent single-family attached or townhouse, satisfying this requirement.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which is limited to residential uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the recreation area on Road B and the trail along part of the stream valley are permitted in the PD Zone. The PD Zone permits any nonresidential, noncommercial use at the discretion of the District Council, on a finding that such use is compatible with the planned development and satisfies the requirements of Section 59-C-7.15. The Vedanta Center may be considered a nonresidential, noncommercial use, and in the Hearing Examiner's view, should be considered compatible with the proposed development. It would provide a visual amenity, possibly a worship center for some residents, and a quiet

neighbor. As discussed below, the specific requirements of Section 59-C-7.15 also would be satisfied.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The density category applied for, PD-2, is the lowest density available in the PD Zones, and is recommended in the Master Plan. All of the evidence indicates that this density *category* is appropriate for the site. As discussed above, the actual dwelling unit density and its distribution on the site create compatibility problems, but these are not related to the density category.

Section 59-C-7.15, Compatibility. This section requires that a proposed development be compatible internally and with adjacent uses. It also establishes minimum parameters for setbacks and building height that are designed to promote compatibility. As discussed in Part V.A.(b)(1) above, the Hearing Examiner finds that the proposed development would not be compatible with existing development in the surrounding area. The application does, however, satisfy the specific setback and building height provisions.

Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no building other than a one-family detached residence may be constructed within 100 feet of such adjoining land, and no building may be constructed at a height greater than its distance from such adjoining land. The Development Plan specifies a maximum height of 40 feet for all residential units, and notes that all units are located at least 60 feet from land adjacent to the north that is recommended in the Master Plan for single-family detached zoning.

Moreover, it is evident on the Development Plan that all units shown within 100 feet of the northern property line are single-family detached homes. The new Vedanta Center building would be over 400 feet from the adjacent property to the north. Adjacent property to the east is recommended in the Master Plan for PD-2 zoning, so these limitations do not apply.

Section 59-C-7.16, Green Area. The PD-2 Zone requires a minimum of 30 percent green area. The proposed Development Plan depicts green space of 7.3 acres, or approximately 46 percent of the site. However, a textual binding element states that green space may be reduced by as much as a third, to the minimum of 30 percent. This makes full and appropriate review of the Development Plan impossible, as discussed in Part III.E. above, although the plan would continue to satisfy Section 59-C-7.16.

Section 59-C-7.17, Dedication of Land for Public Use. This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated to public use, with such dedications shown on all required development plans and site plans. As noted in Part III.E. above, the Development Plan fails to clearly show the small dedication (described by Technical Staff as about six feet deep) required for the right-of-way of Homecrest Road. Accordingly, this requirement is not satisfied.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. As shown on the Development Plan, the proposed project would provide more than the required number of spaces for the single-family detached units, the number of spaces required for the other residential uses, and more than the number of spaces required for the Vedanta Center.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed.

(c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems would be safe, adequate, and efficient. The internal circulation system would not provide vehicular connectivity, to avoid creating a cut-through route for motorists trying to avoid the traffic light. It would, however, provide pedestrian connections among the residential areas, the worship center, the partial stream valley trail and nearby sidewalks, all separate from roadways.

Due to the uncertainty concerning where access would be provided on Homecrest Road, the evidence does not support a finding that points of external access would be safe, adequate and efficient. It appears that safe entrances can be provided as shown on the Development Plan, provided that the utility pole is moved and vegetation is cut back at the Bel Pre Road entrance, and provided that the size and location of the Road C access point is carefully designed to address both the Master Plan and safety. This cannot be assessed, however, without a Development Plan that adequately accounts for contingencies.

(d) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

The proposed development would tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site by preserving the stream valley buffer and additional small, forested areas. Efficient layouts making use of the existing topography, together with preservation of the stream valley, would minimize grading. The evidence establishes that forest conservation requirements under Chapter 22A would be satisfied. The current concept storm water management plan had not yet received DPS approval at the time of the hearing. However, the evidence indicates that the current plan

contains only minor differences from the original plan, which was approved by DPS, and that no waivers are likely to be needed.

- (e) ***That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.***

The Applicant has provided draft documents that adequately provide for homeowners' association for perpetual maintenance of common and quasi-public areas. See Ex. 26(c).

B. Public Interest

The applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment. As discussed in Part IV.A. above, the recommendations from the Planning Board and its Staff appear to have been based on a faulty impression that the road along the northern boundary of the site, which was a key Master Plan objective, was certain to be built. Based on the current Development Plan, that outcome is actually uncertain. Accordingly, for the reasons stated in Part V.A.(a) above, the Hearing Examiner concludes that the subject application is not consistent with the applicable Master Plan.

The evidence of record indicates that the proposed development would have no adverse effects on traffic conditions, schools or public utilities.

The Master Plan plays a central role in the purpose clause for the PD Zones, so in this context its recommendations and objectives are entitled to particular deference. Having found that the proposed development, as depicted on the submitted Development Plan, would not be consistent with the Master Plan, the Hearing Examiner must conclude that approval of the application in its current form would not be in the public interest. The Hearing Examiner finds, however, that reclassification of the subject property to the PD-2 Zone with an appropriate development plan would be in the public interest. With the right development plan, such a project could provide housing diversity, a compatible form of development, environmental protection and the expansion of a religious institution that is open to the public and provides a spiritual home for its members.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, I reach the conclusions specified below.

A. Development Plan

1. The submitted Development Plan is not in substantial compliance with the Master Plan.
2. The Development Plan does not fully comply with the purposes, standards, and regulations of the PD-2 Zone, nor does it provide for a form of development that will be compatible with adjacent development.
3. The Development Plan proposes internal vehicular and pedestrian circulation systems that would be safe, adequate and efficient. The adequacy and safety of external access points cannot be fully evaluated due to uncertainty in the terms describing them on the Development Plan.
4. By its design, by minimizing grading and by stream valley preservation, the proposed development will tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site. The application will comply with forest conservation

requirements under Chapter 22A and requirements for water resource protection under Chapter 19.

5. The development plan is supported by documents that adequately and sufficiently show the ownership and method of perpetual maintenance of areas intended to be used for recreational or other common or quasi-public purposes.

B. Zoning Request

Application of the PD-2 Zone at the proposed location based on the present application is not proper for the comprehensive and systematic development of the County because the proposed development, as shown on the submitted Development Plan:

1. Will not serve the public interest;
2. Will not be in substantial compliance with the applicable master plan; and
3. Will not fully satisfy the purposes, standards and regulations of the zone.

These deficiencies can all be remedied by changes to the Development Plan discussed in this report.

VII. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-836, requesting reclassification from the RE-2 Zone to the PD-2 Zone of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland in the 13th Election District, be **remanded** to provide the Applicant with the opportunity to rectify the deficiencies on the Development Plan that are identified in this report, and to propose a form of development that will be compatible with existing land uses confronting the subject site on the west side of Homecrest Road and with the surrounding area in general.

Dated: February 6, 2006

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner